



EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 187]

NEW DELHI, SATURDAY, JULY 18, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 3rd July 1953

S.R.O.-1420.—Whereas the elections of Shri Devinder Singh and Shri Mukhtar Singh, as members of the Legislative Assembly of the State of Punjab, from the Moga Dharamkot constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Rattan Singh, S/o Shri Sunder Singh, C/o Kotkapura Transport Co. Ltd., Moga;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, LUDHIANA

Harbans Singh, Barrister-at-law, (District and Session Judge), *Chairman*.

Hans Raj Khanna, B.A., LL.B., *Judicial Member*.

Parma Nand Sachdeva, B.A. LL.B., *Advocate Member*.

ELECTION PETITION NO. 301 OF 1952

1. Rattan Singh (S/o Shri Sundar Singh), C/o Kotkapura Transport Co. Ltd. Moga, a voter in the Moga Dharmkot Constituency Registered at No. 7084 in the Electoral Roll for Qasba Moga and a validly nominated candidate for election in Moga Dharmkot Constituency of the Punjab Legislative Assembly at the General Election held in 1951-52—*Petitioner*

Versus

Respondents—

1. Shri Devinder Singh, S/o Shri Ghamdoor Singh, Village and Post Office Charik, Kothi Bir, Tehsil Moga, a candidate declared duly elected to the Punjab Legislative Assembly from Moga Dharmkot Constituency. (Respondent No. 1.)
2. Shri Bukhtar Singh, S/o Shri Bhagat Singh, Village Dharmkot, Tehsil Zira, a candidate declared duly elected to the Punjab Legislative Assembly from Moga Dharmkot Constituency. (Respondent No. 2.)
3. Shri Rup Lal, S/o Shri Bhola Nath, Kashmir Timber House, Moga, (Respondent No. 3.)

4. Shri Mehar Singh S/o Shri Harnam Singh, Village and Post Office Jhandiana Tehsil Moga (Respondent No. 4.)
 5. Shri Anokh Singh S/o Shri Badan Singh 18-A, the Mall Ferozepore. (Respondent No. 5.)
 6. Shri Sikander Lal S/o Shri Gobind Sahai, Advocate, Moga. (Respondent No. 6.)
 7. Shri Sikander Lal S/o Shri Gobind Sahai, Advocate, Moga. (Respondent No. 7.)
 8. Shri Sabdu Ram S/o Shri Chint Ram, C/o Messrs. Gujjar Mal Sadhu Ram Moga. (Respondent No. 8)
 9. Shri Bakhtawar Singh S/o Shri Joginder Singh, General Manager, Moga Transport Co., Ltd., Moga, (Respondent No. 9.)
 10. Shri Bachittar Singh S/o Shri Santa Singh street No. 7, New Town, Moga. (Respondent No. 10.)
 11. **Shri Sher Singh S/o Shri Natha Singh Village and Post Office Lohgarh, Tehsil Zira.** (Respondent No. 11.)
 12. Shri Sohan Singh S/o Shri Ram Singh of Fazilka, Ward No. 5. House No. 11S. (Respondent No. 12.)
 13. Shri Wazir Singh S/o Shri Khushal Singh Village Longiwind Post Office Zira Tehsil Zira. (Respondent No. 13.)
 14. Shree Lal S/o Shri Bisna Village and Post Office Kishanpura Kalan Tehsil Zira. (Respondent No. 14.)
 15. Shri Lal Chand S/o Shri Gobind Ram Village Qadar Wala Post Office Kot Ise Khan Tehsil Zira. (Respondent No. 15.)
 16. Shri Labh Singh S/o Shri Bhola Singh, Mandi Gur Har Sahai. (Respondent No. 16.)
 17. Shri Sat Dev S/o Shri Ganga Bishen C/o Ganga Bishen and Sons, Railway Road, Moga. (Respondent No. 17.)
 18. Shri Sham Lall S/o Shri Telu Ram, Medical Practitioner, Moga. (Respondent No. 18.)
 19. Shri Dyal Singh S/o Shri Mela Singh, Village Qadarwala, Post Office Kot Ise Khan, Tehsil Moga. (Respondent No. 19.)
 20. Shri Partap Singh S/o Shri Sant Singh Village and Post Office Ghal Kalan Tehsil Moga. (Respondent No. 20.)
 21. Shri Atma Singh S/o Shri Isher Singh Village Budhsingwala Tehsil Moga. (Respondent No. 21.)
 22. Shri Ajit Singh S/o Shri Ratan Singh Village Mansur Dewa Post Office Zira and Tehsil Zira. (Respondent No. 22.)
 23. **Shri Randhir Singh S/o Shri Hirra Singh Qasba Moga Ward No. 1 Basti Gobind Garh, Moga.** (Respondent No. 23.)
 24. Shri Bakshi Ram S/o Shri Ranjhu Village and Post Office Bandala. Tehsil Phillaur District Jullundur. (Respondent No. 24.)
 25. Shri Harnam Singh S/o Shri Jaimal Singh Director the Moga Transport Co. Ltd., Moga, Bagh Ganpat Rai, Moga. (Respondent No. 25.)
 26. Shri Santokh Singh adopted S/o Shri Khazan Singh Advocate, Moga. (Respondent No. 26.)
 27. **Shri Niranjan Singh S/o Shri Santa Singh Village Pheru Shahr, T and District Ferozepur.** (Respondent No. 27.)
 28. Shri Sucha Singh S/o Shri Hazara Singh, Village and Post Office Kishanpura Kalan, Tehsil Zira. (Respondent No. 28.)
- M/S Atma Ram and Gobind Lal Batra, Advocates, for Shri Rattan Singh, petitioner.
- M/S Ajmer Singh, Amir Singh and Dina Nath Sharma, Advocate for Shri Davinder Singh and Shri Mukhtar Singh, respondents 1 and 2.

ORDER

(PER PARMANAND SACHDEVA, Advocate Member).

The election of Shri Devinder Singh and Shri Mukhtar Singh, from the general and the Reserved Seat respectively, of the Moga-Dharmkot Double-Member Constituency of the Punjab Assembly has been challenged by Shri Ratan Singh, petitioner, defeated candidate at the election of the said constituency by an election petition on various grounds set out at length in the said petition which will be taken up at their proper places in this order. Both the respondents vehemently opposed the said petition controverting the various grounds set out in the election petition which will be dealt with at their proper place in this order.

On behalf of the respondents preliminary objections were raised to the effect that the petitioner cannot claim two declarations in the alternative, cannot challenge the election of the two respondents by means of one single petition, he should deposit a security of Rs. 1,000 each in respect of each respondent and that his prayer for declaration, that the election of respondents Nos. 1 and 2 was void, was barred by limitation. Objection was also raised that the List of particulars supplied was vague and indefinite in several respects and that the whole petition or such portions of the petition or the List was liable to be struck off. As the preliminary points raised by the respondents, related to the frame of the petition, the relief claimed by him and raised an important point of limitation besides involving the decision whether the List of Particulars, supplied by the petitioner along with the petitions, was in accordance with section 83(1)(2) of the Act, the Tribunal framed the following preliminary Issues:

1. Whether the petitioner cannot claim two declarations in the alternative? If not, what is its effect?
2. Whether the petitioner cannot file one petition challenging the election of both respondents Nos. 1 and 2 who were elected from a two-member Constituency? If not, what is its effect?
3. If Issues Nos. 1 and 2 are found against the respondents, was it necessary for the petitioner to deposit two securities of Rs. 1,000 each and if so what is its effect?
4. Is the petition, qua the prayer of declaration of the election of respondents Nos. 1 and 2, void, time barred? If so, what is its effect?
5. Whether the petition and the list, annexed thereto, do not comply with the provisions of section 83(1)(2) of the Representation of the People Act, 1951, and is the whole petition or any part of the petition or the list, liable to be struck off?

After hearing the arguments of both the parties the Tribunal decided the first four preliminary Issues in favour of the petitioner and ordered certain portions of the List of Particulars to be struck off on account of being too vague and indefinite and called upon the petitioner to supply further particulars in respect of certain items *vide* their detailed order dated the 6th December 1952, (Annexure 'A', to be read as part of this order).

In compliance with the above order of the Tribunal, the petitioner filed an amended petition after striking off the portions, ordered to be struck off, and supplying further particulars with regard to other items and the respondents also filed further written statements in reply to the amended petition. After a careful perusal of the pleadings of the parties, the following Issues were framed by the Tribunal on the 12th December, 1952:

1. Was the nomination paper of Shri Mukhtar Singh, respondent No. 2, defective, as detailed in paragraph VI(1)(a) and (b) of the petition and so liable to be rejected; and if so, has its improper acceptance materially affected the result of the election?
2. Was the nomination paper of Shri Sadhu Ram respondent No. 8, defective as detailed in paragraph VI(2) and (3) of the petition, and so liable to be rejected, and if so, has its improper acceptance materially affected the result of the election?
3. Was the nomination paper of Shri Mehar Singh, respondent No. 4, defective, as detailed in paragraph VI(4) of the petition and so liable to be rejected, and if so, has its improper acceptance materially affected the result of the election?
4. Were the nomination papers of Shri Rup Lal, respondent No. 3, and Shri Lal Chand respondent No. 15, defective, as detailed in paragraph

VI(5) of the petition, and so liable to be rejected, and if so, have their improper acceptance materially affected the result of the election?

5. Was the nomination papers of Shri Bachitar Singh, respondent No. 10, defective, as detailed in paragraph VI(6) of the petition, and so liable to be rejected, and if so, has its improper acceptance materially affected the result of the election?
6. Was the nomination papers of Shri Devinder Singh, respondent No. 1 defective, as detailed in paragraph VI(7) of the petition, and so liable to be rejected, and if so, has its improper acceptance materially affected the result of the election?
7. Was there any non-compliance with the provisions of Rule No. 19, as detailed in paragraph VI(A), and if so, has it materially affected the result of the election?
8. Did respondents 1 and 2, or either of them, issue any of the posters detailed in paragraph VII(1) of the petition and did these posters not bear on their faces, names and addresses of the printers and publishers, and if so, has it materially affected the result of the election?
9. Did respondents 1 and 2 commit any of the acts detailed in paragraph VII(2) and (4) to induce belief in the voters that they would be rendered Object of Divine Displeasure and Spiritual Censure if they did not vote for respondents 1 and 2; if so, what is its effect?
10. Did respondents 1 and 2, through the posters and circulars referred to in paragraph VII(3) of the petition, exercise undue influence on the voters on ground of religion alone for voting in their favour and against the petitioner; and if so, what is its effect?
11. Did respondents 1 and 2 exercise coercion and undue influence, as detailed in paragraph VII(5) of the petition, and if so, what is its effect?
12. Did respondent No. 1 incur the expenses detailed in paragraph VII(6)(a) (i) to (v) in relation to his election and if so, what is its effect?
13. Is para 'B' of the Return of Expenses lodged by respondent No. 1 materially wrong and incorrect in material respects as detailed in paragraph VII(6)(a) (vii) to (xi)? If so, what is its effect?
14. Is the Return expenses, filed by respondent No. 2 wrong in material particulars, as detailed in paragraph VII(6)(b), and if so, what is its effect?

Both the parties have adduced oral and documentary evidence in respect of their pleas and lengthy arguments were addressed to the Tribunal by the learned counsel on both sides.

With a view to properly appreciate the evidence produced by both the parties and to judge as to how far the parties have been able to substantiate the various pleas, it will be better to examine the facts of this case in details. The petitioner and the 28 respondents i.e. 29 candidates in all filed their nomination papers for the two seats i.e. General and the Reserved seat of this Double-Member Constituency, and all the 29 were duly nominated. Respondents Nos. 17 to 28 withdrew from the contest on or before the last date appointed for withdrawal leaving the petitioner and respondents Nos. 1 to 16 to contest the election. The polling in the constituency took place from the 2nd of January, 1952 to the 2nd of February, 1952, and the counting took place on the 14th of February, 1952. The various candidates polled the votes shown against them out of a total of 1,02,421 valid voted polled:

(1) Shri Ratan Singh . . .	(Petitioner)—18,492
(2) Shri Devinder Singh . . .	(Respondent No. 1) (General - Seat)—19,429
(3) Shri Mukhtar Singh . . .	(Respondent No. 2) (Reserved Seat)—16,439
(4) Shri Rup Lal . . .	(Respondent No. 3) (General Seat)—3,641
(5) Shri Mehar Singh . . .	(Respondent No. 4) (General Seat)—9,212
(6) Shri Anokh Singh . . .	(Respondent No. 5) (General Seat)—1,320
(7) Shri Sain Dass . . .	(Respondent No. 6) (Reserved Seat)—2,464
(8) Shri Sikandar Lal . . .	Respondent No. 7) (General Seat)—736
(9) Shri Sadhu Ram . . .	(Respondent No. 8) (General Seat)—932
(10) Shri Bakhtawar Singh . . .	(Respondent No. 9) (General Seat)—648

(11) Shri Bachitar Singh . . .	(Respondent No. 10) (General Seat)—2,023
(12) Shri Sher Singh . . .	(Respondent No. 11) (General Seat)—503
(13) Shri Sohan Singh . . .	(Respondent No. 12) Reserved Seat)—15,907
(14) Shri Wazir Singh . . .	(Respondent No. 13) (General Seat)—662
(15) Shri Lall . . .	(Respondent No. 14) (Reserved Seat)—6,100
(16) Shri Lal Chand . . .	(Respondent No. 15) Reserved Seat)—2,358
(17) Shri Labh Singh . . .	(Respondent No. 16) Reserved Seat)—1,555

From the above statement it will be clear that out of the 17 contestants, six were for the reserved seat and the remaining eleven for the general seat of the Constituency. Further it may be noted that the petitioner list to respondent No. 1 by a narrow margin of 937 votes only. According to the plea, taken up by respondent No. 1 at the time of producing evidence, votes, cast in favour of Shri Sadhu Ram, respondent No. 8 and Shri Bachitar Singh, respondent No. 10, alleged to have been cast away votes, would amount to $932 + 2,023$, total 2,955.

I will now take up the Issues seriatim:

Issue No. 1.—Objection has been raised with regard to Shri Mukhtar Singh, respondent No. 1, that he is a Balmiki, professing Sikh religion which is not a Scheduled caste in the Punjab State, and that he gave a wrong declaration that he was a member of the Balmiki caste and thus eligible to stand from the reserved seat. It has been further stated that he has described himself as a Sikh in all election posters and on that ground he was not entitled to be nominated for the reserved seat of this constituency. No objection, however, was taken against his nomination before the Returning Officer but the petitioner is not debarred from raising this point for the first time in his election petition.

It would be important to refer to the copy of the electoral roll of the Constituency with a view to find out the relevant entry with regard to Shri Mukhtar Singh. This entry is a final and conclusive proof of the facts stated therein especially for the following purposes:

- (a) That he is entitled to vote,
- (b) That he is entitled to offer himself as a candidate, and
- (c) That he is entitled to propose or second the nomination of any other candidate.

I am clearly of the opinion that an Election Tribunal cannot go behind it and evidence cannot be led to contradict the contents of the said entry, inasmuch as there is a separate procedure prescribed for getting these entries amended, rectified or cancelled. It is a pity that none of the parties cared to put in a copy of this entry and the Tribunal had to send for it *suo motto* before passing final orders. The relevant entry in the Electoral Roll for Dharamkot Town at page 50 reads as follows:

Sl. No.	H. No.	Voter's name	Father's name	Profession	Caste	Religion
1692	50)	Mukhtar Singh	Bhagat Singh	Zarnindar	Harijan	Hindu

This entry sets at rest the question of religion of Respondent No. 2 which is given as Hindu and thus fulfils the requirement of para. 3 of the Constitution (Scheduled Castes) Order 1950. The position taken up by Respondent No. 2 that he is a Hindu and not a Sikh is consistent with and borne out by this entry. Instead of giving his caste as Balmiki, the entry shows that he is Harijan which to all intents and purposes means a member of Scheduled caste. He has made this more clear by giving a declaration at the time of filing his nomination paper that he is a Balmiki. Thus the particulars given in the Electoral Roll coupled with the declaration would *prima facie* be a very strong evidence to prove that Respondent No. 2 is a Balmiki professing Hindu religion.

The question before the Tribunal is whether at the time of the nomination, scrutiny and election, Shri Mukhtar Singh was a Balmiki Hindu, thus belonging to a Scheduled caste or whether he was a Balmiki Sikh which is not a Scheduled caste according to the Constitution (Scheduled Castes) Order 1950, clauses (2) and (3) which run as under:

- (2) "Subject to the provision of this Order, the castes, races or tribes, or parts of, or groups within, castes or tribes, specified in Parts I to XVI of the Schedule to this order shall, in relation to the States to which those Parts respectively relate, be deemed to be Scheduled Castes so far as regards members thereof resident in the localities specified in relation to them in those Parts of that Schedule".

(3) Notwithstanding anything contained in paragraph 2, no person, who professes a religion different from Hinduism shall be deemed to be a member of a Scheduled Caste;

Provided that every member of the Ramdasi, Kabirpanthi, Mazhabi or Sikligar caste resident in Punjab or the Patiala and East Punjab States Union shall, in relation to the State, be deemed to be a member of the Scheduled Castes whether he professes the Hindu or the Sikh religion.

It may be stated that members of Balmiki or Chura castes at No. 7 and Mazbhi caste at No. 20, are shown to be the members of the Scheduled caste in part VII of the Schedule given below the above Order relating to Punjab. The petitioner gave a declaration at the time of the nomination that he was a Balmiki meaning thereby that he was a Balmiki Hindu, and thus qualified to offer himself as a candidate for the reserved seat which he could not do if he were a Balmiki Sikh. The petitioner stated in his petition that Shri Mukhtar Singh was a Balmiki Sikh and thus not qualified to offer himself as a candidate for the reserved seat, but he has led evidence to show that Shri Mukhtar Singh was a Mazhabi Sikh. There is no doubt that Shri Mukhtar Singh got enrolled in the army as a Mazhabi Sikh and in certain posters relating to his election he has been shown as a Sikh and in the First Information Report Ex. P.W. 33/A and in his statement before the Court in a criminal case, State Vs. Ram Chand Ex. P.W. 36/A, he has given his caste as Mazbhi Sikh. He has, however, clearly stated in his evidence before the Tribunal as R.W. 38 that he is a Balmiki Hindu and does not believe in Sikhism or in the 10 Gurus. The question of a religion of a man is a matter of persons faith and cannot be the subject matter of any evidence of a third party. In view of his statement that at the time of nomination, scrutiny and election, he was a Balmiki Hindu by faith and believed in Guru Balmiki Ji and did not believe in Sikhism or in the 10 Gurus of Sikhs I think the position becomes very clear. As a Mazbhi he could be a member of the Scheduled caste according to entry No. 20 of part (7) of the Schedule but it will serve no useful purpose to make a further sifting enquiry into this matter. Hinduism is a broad and general religion and all Sikhs were originally Hindus and became Sikhs because they believed in the 10 Gurus. The wearing of long *keshas* and beard is not a necessary and indispensable emblem of the Sikh religion as among the Sikhs there are Sehjdhari who are as good Sikhs as Kesha-dharis. People in rural areas mostly wear long *keshas* and beards according to their own peculiar mode of life and convenience and not a matter of faith. The word "Sikh" has not been defined in any of the enactments relating to election. The only Statute attempting to give any such definition is Sikh Gurdawaras Act wherein it is laid down in section 2(9) that:

"Sikh means a person who professes the Sikh religion. If any question arises as to whether any person is or is not a Sikh he shall be deemed respectively to be or not to be a Sikh according as he makes or refuses to make any such manner as the Local Government may have prescribed the following declaration:

"I solemnly affirm that I am a Sikh and that I believe in the Guru Granth Sahib and that I believe in the 10 Gurus and that I have no other religion."

Thus the minimum qualification for being a Sikh is that he should be prepared to give a declaration as mentioned above, and there is no other outward or concrete test for the purpose of determination whether the person is or not a Sikh at a time.

In view of the clear declaration made by Shri Mukhtar Singh at the time of nomination and his unequivocal statement before the Tribunal that he is not a Sikh and he does not believe in the 10 Gurus and that he is a Balmiki Hindu, I think the matter is clinched and no useful purpose will be served by discussing at length as to what is the effect of Shri Mukhtar Singh having given himself as a Mazhabi Sikh at the time of the enrolment in the army and in subsequent papers, i.e. the First Information and the statement before the Magistrate referred to above. Shri Mukhtar Singh has given satisfactory explanation that he had given his caste as Mazhabi Sikh with a view to secure enlistment in the army which he could not do if he had shown himself as a Balmiki. He appears to have given his caste as Mazhabi to the police and as he was keeping long *keshas* and beard, it was nothing unusual that the police man wrote his caste as Mazbhi Sikh. He made a statement to the Magistrate in the following words:

"I told the accused that I was a Mazhabi by caste but did not state so before the police."

In rural areas the words "Mazhabi" and "Mazhabi Sikh" are very often confused. For example R.W. Rakha Singh stated in cross-examination:

"By Mazhabis I mean Sikhs who are followers of Balmuk Rishi. In our village there is no Mazhabi who believes in the 10 Gurus."

In view of the above discussion, I find Issue No. 1 in favour of the respondents and hold that the nomination papers of Shri Mukhtar Singh, respondent No. 2, were not defective and were thus properly accepted.

Issues Nos. 2 and 5.—These will be taken up together as the allegations, in the petition with regard to the nomination papers of Shri Sadhu Ram, respondent No. 8 and Shri Bachitar Singh, respondent No. 10, are similar. The petitioner's case is that Shri Sadhu Ram, being a member of the firm of Rama Rice Association Moga and Wheat Association Moga, was on the date of the acceptance of the nominations in contract with the State of Punjab for the supply of rice and for the supply of wheat respectively and was thus disqualified from the membership of the State Legislature under section 7(d) Chapter III of Part II of the Representation of the People Act 1951. Similarly the objection to the nomination of Shri Bachitar Singh, respondent No. 10, was to the effect that as he was in contract with the Punjab State for transport of wheat on the routes Smalsar to Moga and Smalsar to Kasubegu on the date of the acceptance of his nominations and was also disqualified from membership of the State Legislature vide section 7(d). Chapter III, Part II of the Representation of the People Act, 1951. With regard to these allegations in the petition both the respondents contented themselves by making a reply in their written statements to the effect that these allegations are not admitted and are denied. They further stated that anyway the alleged improper acceptance of the nominations, if any, has not materially affected the result of the election and hence the objection is meaningless. It is significant to note that both the respondents at the time of filing their written statements, did not admit that Shri Sadhu Ram and Shri Bachitar Singh were in contract with the Punjab Government and that this in any manner entailed any disqualification for their being nominated as candidates for the Legislative Assembly. The petitioner, therefore, was put to proof and he has led both oral and documentary evidence to substantiate his allegations. After the evidence of the petitioner had been recorded, the respondents took a sudden sommer-sault and propounded the theory that the disqualification of Shri Sadhu Ram and Shri Bachitar Singh, on the basis of their being in contract with the State of Punjab for the supply of foodgrains and the performance of certain services, was well known in the constituency and that the votes cast in their favour should be considered to have been wasted by the electorate and labelled as "thrown away votes." The respondents led some oral evidence to this effect with a view to prove their case regarding the theory of "thrown away votes." Respondent No. 1 made a statement as R.W. 34 that at the time of nomination papers he knew that Shri Sadhu Ram and Shri Bachitar Singh were in contract with the Government for the supply of foodgrains and the transport of wheat respectively, but he did not raise any objection against them in view of a mutual understanding arrived at between the parties on the date of scrutiny at Ferozepore. The position, taken up by respondent No. 1, is rather strange and unbelievable. Naturally there is a tendency on the part of candidates to object to the nomination papers of their rivals with a view to reduce the number of candidates and to have the field of election narrowed down between as few candidates as possible. This position is inconsistent with his reply in the written statement inasmuch as in the written statement the allegations are denied. At the time of producing evidence the allegations are taken not only as an admitted fact but a fact so well known in the constituency that the votes, cast in favour of the two respondents, are suggested to be thrown away votes. It is difficult to reconcile the two inconsistent positions taken up by both the respondents. On one hand both the respondents say that the disqualification was so well known in the Constituency that the votes may be treated as "thrown away votes", while in the written statements they should deny the existence of these contracts which would imply that they themselves had no knowledge of these whatsoever.

In view of the position, taken up by the respondents at the time of producing their evidence, it may be taken for granted that the respondents admit that both Shri Sadhu Ram and Shri Bachitar Singh were disqualified from offering themselves as candidates from this constituency. The statement of Shri Sadhu Ram, respondent No. 8, clearly shows that he was a partner of Rama Rice Association Moga when he filed the nomination papers and that the said Association had entered into a contract with the Punjab State for the supply of husked rice before and during the days of election, and that this contract was still in force. He further stated that he was a member of the Wheat Association Moga and that this Association was in contract with the Punjab State for the supply of wheat

during the days of election. Similarly Shri Bachitar Singh as P.W. 6 has made a statement that:

"During the days when he filed his nomination papers, he was under contract with the Punjab Government for transport of wheat between various stations in Ferozepore District including Smalsar to Kasu Begu and Smalsar to Moga *vide* agreement Ex. P.W. 6/A, and that this agreement remained in force till 31st March, 1952."

Petitioner has led further evidence also to support the pleas under this head which need not be discussed. Suffice it to say that the Punjab State had undertaken to secure an equitable distribution of foodgrains in the State, had entered into agreement with various Associations in the Districts and with a view to ensure an equitable distribution of foodgrains to deficit areas, the Punjab State had taken upon itself to transport these foodgrains and had employed Shri Bachitar Singh and other heavy load truck owners to transport the foodgrains on behalf of the State from one place to another. These contracts clearly fall within the definition of disqualification as laid down in section 7(d) of the Representation of the People Act, 1951.

This Tribunal has already decided on the 2nd April, 1953, in the petition Shri Ram Chand Vs. Shri Wadhawa Ram, published in Gazette of India Extraordinary dated April 17, 1953, to the effect that the supply and distribution of foodgrains was a service undertaken by the Punjab Government and that any person who has any share or interest in a contract for the supply of such goods to or for the performance of any services, undertaken by the State Government, was disqualified for being chosen as, and for being, a member of the Legislative Assembly of the State. In my opinion both Shri Sadhu Ram and Shri Bachitar Singh are hit by the above disqualification and their nomination papers were improperly accepted.

The next question is whether the improper acceptance of the nomination papers of these two respondents have materially affected the result of the election or not.

In the case of an improper rejection of the nomination paper, there is a strong presumption in favour of the fact that the result of the election has been materially affected, but in the case of improper acceptance of a nomination paper, there is no such presumption and the onus lies on the petitioner to prove that the result of the election has been materially affected as a result of the improper acceptance of the nomination papers. It is difficult for the petitioner to prove this strictly by direct and first hand evidence because voters of the constituency, who have voted for the two respondents i.e. Shri Sadhu Ram and Shri Bachitar Singh, cannot be produced to state that in case Shri Sadhu Ram and Shri Bachitar Singh were not in the field, and their nomination papers had been rejected, they would have voted for the petitioner. Such evidence is legally barred under the election law as it will interfere with the secrecy of voting. There are reported cases both for and against the proposition and no hard and fast rule has been laid for the determination of this question. Every case has to be judged on its own merits and from all other attending circumstances. In this case both Shri Sadhu Ram and Shri Bachitar Singh, as P.Ws. 5 and 6, have made statements that in case they were not in the field of election and their nomination papers had been rejected, the voters who have polled their votes in their favour, would have surely supported the petitioner Shri Ratan Singh. This evidence is more or less a guess or opinion which also cannot be legally accepted on its face value but cannot be summarily ruled out inasmuch as all the three i.e. the petitioner and respondents Nos. 8 and 10 are Commission Agents in Moga Mandi and wield lot of influence. It is naturally expected that voters of these two respondents would have gone in favour of the petitioner if respondents Nos. 8 and 10 had been eliminated. The number of votes secured by respondents Nos. 1 and 2, respectively is 19,429 and 16,431. The number of votes, secured by the petitioner and the two respondents Nos. 8 and 10, are 18,492, 932 and 2023 respectively as stated above. Looking at the figures of votes, polled in favour of the several candidates, and the narrow margin between the votes secured by the petitioner and respondent No. 1, it is not too much to forestall that in case respondents Nos. 8 and 10 had been eliminated, the petitioner might have succeeded in securing a considerable number of votes more in his favour to compete successfully with respondent No. 1.

Before completing the discussion on this aspect of the case, it will be better to take up the theory of "thrown away votes" as propounded by the respondents. It has already been stated above that the respondents did not take up this plea in the written statement and adopted this as an afterthought when confronted with the oral and documentary evidence with regard to the respondents Nos. 8 and 10, being in contract with the State of Punjab for the supply of goods and for the

performance of services which entailed their disqualification. Though their disqualification, according to this belated plea, was too well known in the Ilaqa, they failed to mention this fact in their written statements which would show that a fact, which was too well known in the Ilaqa, was not known to the respondents themselves. This amounts to blowing hot and cold at the same time.

With a view to establish the plea of "thrown away votes" it is necessary to show that the disqualification was widely known and had been conveyed to the electorate by means of posters, pamphlets etc., as laid down in the following authorities cited on behalf of the petitioner:

1. In case reported in Sen and Poddar, election cases, page 790, Tayeduddin Ahmed Vs. Khurram Khan Pance and others it was held that:

"Notice to voters of candidate's want of qualification, so as to render votes cast in his favour liable to be "thrown away", require: (a) greatest possible publicity by advertisement, affixing at prominent places etc., and (b) evidence that voters voted in perverse manner, i.e., after due notice."

2. The following note at page 430 of the Law of election by Nanak Chana Pandit also seems to be relevant.

"If the disqualification of the returned candidate is not a patent fact, then the votes given to him, cannot be treated as merely thrown away and it is only fair and reasonable that the voters who gave those votes, should get an opportunity of making a fresh choice."

In the present case there is absolutely no evidence that any posters or leaflets were issued to proclaim the disqualification of the two respondents Nos. 8 and 10 to the electorate. The evidence of about a dozen of witnesses of the locality, which is more or less of a partisan character that the disqualification of these two respondents was well known in the Ilaqa, cannot be accepted at its face value and in my opinion is quite insufficient to prove that the disqualification was so patent or was made public in a manner to show that it was widely known in the Constituency. No voters have come forward to make a statement that they voted for these two respondents despite of the knowledge of their disqualification and so the votes cast in favour of these two respondents cannot be considered to have been thrown away. This view of mine is supported by the case reported at page 345 of Sen and Poddar S. Moola Singh Vs. Ch. Mangoo Ram and others in which it was laid down that:

"Where voters voted for a candidate without knowledge of want of qualification of to that candidate (which is not a patent one), such votes are valid and cannot be considered to have been "thrown away".

On behalf of the petitioner the case decided by the Bhagalpur Tribunal, reported in the Gazette of India Extraordinary at page 233 dated the 2nd February, 1953, was cited. The following extract from this reported authority appearing at page 242, is relevant and may be read with advantage:

"There is difference of opinion as to the effect of improper acceptance of a nomination paper. In Belgaum District (N.M.R.) case reported in Jagat Narain, Vol. II, page 31, the Commissioners observed that there was a heavy onus on the petitioner to prove by affirmative evidence that all or a large number of votes secured by the candidate whose nomination paper had been improperly accepted would have gone to him. In Agra District (N.M.R.) case reported in Jagat Narain, Vol. IV, page 4 it has been observed that the improper acceptance or refusal of a nomination paper is so grave an irregularity that the strongest and most conclusive proof for rebuttal of the presumption that the election has been materially affected will be required. Both these extreme views have been dissented from in the case of Ilosharpur West General Constituency reported in Doabia's Election Cases, Vol. II, page 268. We respectfully agree with the view taken in this last case. In Belgaum District (N.M.R.) case itself, it has been mentioned that the majority of the Commissioners were inclined to hold that "it would not be proper even to allow evidence to be adduced by the petitioner or anybody else to show that one or other of the candidates would have got Mr. Lathe's (the candidate whose nomination paper had been improperly accepted) votes or any portion of them". In our opinion, this view is perfectly correct. Voters cannot come forward to say that they had voted for Kedarnath Sinha and what they would have voted for the petitioner or any other candidate, if Kedarnath Sinha had not been in the field because, in that case, the secrecy of voting would be infringed and section 94 of the Act would stand

in the way. The parties, in this case, have made an attempt to adduce some affirmative evidence on this point. P.W. 2 is the son of Kedarnath Sinha and he says that the votes secured by his father would have gone to the petitioner if his father had not been a candidate. The petitioner (P.W. 28) says that he would have got all those votes if Kedarnath Sinha had not been a candidate. On the other hand R.Ws. 10 and 21 have said that the votes secured by Kedarnath Sinha would have gone to the other Independent candidate and to respondent No. 1 if he had not been in the field. We think that this kind of evidence is inadmissible as they are more or less opinions and guesses which do not come within the classes of opinion which are relevant under the Indian Evidence Act. That being so, no affirmative evidence could be adduced by the petitioner to show that the votes, secured by Kedarnath Sinha, would have gone to him. Hence it is impossible to place an onus upon him which he cannot discharge.

It is important to remember that we have only to decide whether the result of the election has been materially affected and not whether the result of the election would have been altered if Kedarnath Sinha's nomination papers had not been improperly accepted. As held in the Hoshiarpur West General Constituency case, "The question whether or not the result has been materially affected must always be a question of fact to be determined on the facts of each particular case, and no fast and hard rules for determining this can possibly be laid down." The Commissioner's have, however, said in that case that they had find whether "the result in all probability would have been different if the nomination paper of a particular candidate had not been improperly accepted. We feel that the words "in all probability" are rather strong. If the number of votes secured by the candidate, whose nomination paper has been improperly accepted, is lower than the difference between the number of votes secured by the successful candidate and the candidate who has secured the next highest number of votes, it is easy to find that the result has not been materially affected. If, however, the number of votes secured by such a candidate is higher than the difference just mentioned, it is impossible to foresee what the result would have been if that candidate had not been in the field. It will neither be possible to say that the result would actually have been the same or different nor that it would have been in all probability the same or different. In the Multan Division Towns Muhammadan Constituency case reported in Sen and Poddar's election cases, page 597 which was a case of improper rejection of nomination paper, one of the grounds given for holding that the result of the election had been materially affected, was that it was impossible to foresee what the result would have been if the nomination paper had not been improperly rejected. As we have said, the same position arises in this case also because Kedarnath Sinha secured 903 votes whereas the difference between the votes secured by Tribeni Kumar respondent No. 1, and the petitioner is that of 858 votes only.

On a consideration of all the facts and circumstances mentioned above, we hold that the result of the election has been materially affected due to improper acceptance of nomination papers of respondent No. 3. We thus answer this issue in the affirmative."

Applying the test laid down in the above mentioned authority and the other authorities, cited therein, it becomes abundantly clear that the result of the election would have been materially different from what it is now in case the two respondents Nos. 8 and 10 were not in the field.

On behalf of the respondents, the attention of the Tribunal was drawn to a decision of the Election Tribunal of Vindhya Pradesh published in Government of India Gazette Extraordinary dated the 5th of April, 1953, at page 1063. This was cited in order to serve as an authority to hold that the result of election had not been materially affected by the improper acceptance of a nomination paper of a respondent. This case also deals with the theory of thrown away votes and the relevant portion at page 1068 may be read with advantage:

"There is no satisfactory evidence to show that the electorate, who are very backward in this area, had wide notice of the fact that Respondent No. 2 who was a leading and influential man of the Ilaga had been convicted and sentenced to three years' rigorous imprisonment and fined. Even the knowledge of a conviction alone would not be proof of disqualification, as the law requires that such conviction must be

not less than two years (see section 7 of the R.P. Act, 1951). Man Bahadur Singh (P.W. 14) has deposed that he had knowledge of the conviction and sentence, but there is no other satisfactory evidence to show that all or majority of the electors had notice of this conviction or that a wide publicity was given to it. We can well imagine that the agents of the rival candidates must have made capital out of this conviction of Respondent No. 2, but in the absence of any direct proof to that effect, such supposition cannot be the basis of our findings.

According to the English Rulings quoted by the learned council for Respondent No. 1, the necessary ingredients of the principle of the "votes being thrown away" are wide publicity or notoriety. For instance in Scheduled's Parliamentary Election at pages 316 to 318 it is stated that votes given for a disqualified candidate after notice, are thrown away. Similarly in Roger's on Election Vol. II at page 82, it is stated that an elector who, with actual knowledge, though without express notice of the fact of disqualification, votes for a disqualified candidate, throws away his votes. Reference has been made to the judgment of Lord Denman C. J. in L. J. Q. B para. 201 where it is given that "where the disqualification be of a sort of which notice is to be presumed, none need expressly be given..... ."

33. In the present case we find that there is an absence of proof of publicity or of knowledge of disqualification and the period of sentence, without which no question of disqualification would arise. The case of Lady Sandhurst, recorded in Queen's Bench Division (1889) Vol. 23, page 79, is easily distinguishable, because the disqualification in that case was that the person elected was a woman, instead of a man, and this matter was necessarily known to everyone.
34. We may also mention that this plea of votes "thrown away" was never raised in the pleadings. On the other hand, in the written statement of Respondent No. 1, the fact of this disqualification was denied. (see para. 6).

For these reasons we find that the contention of votes thrown away now raised by learned counsel for respondent No. 1 cannot be sustained."

While agreeing fully with the proposition laid down in connection with the 'thrown away votes' in the ruling cited above, I am unable to agree with the finding of the Tribunal to the effect that the result of the election had not been materially affected by the improper acceptance of the nomination paper in the case. The following paragraph from the report of this case may be cited with advantage:

"20. We may note that the evidence of speculative nature cannot be helpful in the decision of this case. Much of the evidence in this case, however, is of this nature. We need hardly add that an Election Tribunal can arrive at its conclusions and form the judicial opinion upon legal proof of the matters in issue. Conjecture cannot be a substitute for legal proof. The provisions of the India Evidence Act apply in all respects to the trial of an election petition subject to the provisions of the R.P. Act, 1951. The standard of proof cannot be slackened in favour of the party because the matters required to be proved happen to be very difficult to be proved. We shall certainly take in account all surrounding circumstances and form our opinion on legal evidence without being oblivious of the imponderables implicit in such matters, but respectfully we have no hesitation in saying that we are not prepared to go so far as the Bhagalpur Tribunal suggests in the order published in the *Gazette of India (extraordinary)*, dated the 2nd February, 1953."

With due deference to the opinion of the learned Commissioners in this case with regard to their finding as to the material affect on the result of election I am inclined to agree with the findings of the Election Tribunal of Bhagalpur, mentioned above, which I think is nearer the facts of the present case as brought out by the voting result and other attending circumstances of the case.

Taking into consideration the total number of votes polled, the number of votes secured by the successful candidates, the petitioner and the various respondents and other circumstances of the case, as brought out in the evidence of the parties, I am clearly of the view that the result of election in this case has been materially affected by the improper acceptance of the nomination papers of Shri Sadhu Ram.

respondent No 8 and Shri Bachitar Singh, respondent No 10 At any rate, I am clearly of the view that the result of Election would have been most probably different from what it is now in case respondents Nos 8 and 10 were not in the field I would, therefore, find Issues Nos 2 and 5 in favour of the petitioner

Issues Nos 3 and 4—These can be taken together as the point involved in both is practically similar Objection has been taken to the nomination paper of Shri Mehar Singh, respondent No 4, on the ground that he chose "ears of corn and sickle" as his first preference symbol which should not have been chosen by respondent No 4 without the permission of the Returning Officer which respondent No 4 did not obtain Similarly objection has been taken to the nomination paper of Shri Rup Lal, respondent No 3 and Shri Lal Chand, respondent No 15, as both of them had chosen "tree" as their first preference symbol which should not have been chosen by respondents Nos 3 and 15 without the permission of the Returning Officer, which had not been obtained It is, therefore contended by the petitioner that the nomination papers of these respondents had been improperly accepted and on that account the result of the election has been materially affected Both these Issues were not very seriously pressed by the petitioner's counsel at the time of argument It may be stated that the choice of symbol to be given by a petitioner in his nomination paper is more or less a matter of directory procedure and not mandatory The symbols have to be allotted finally to the duly nominated candidates by the Returning Officer irrespective of their choice of symbols given in their nomination papers This would mean that a candidate may be allotted finally any symbol by the Returning Officer, even if he had not entered that symbol as a symbol of his choice According to rules a candidate has to enter three symbols in order of his preference with a view to enable the Returning Officer to allot anyone of these to him but the Returning Officer as stated above may not be able to accommodate his wishes and may allot him any symbol not included even in the three symbols given by him The Election Commission, in this respect had issued a circular to the Returning Officers for their guidance to the effect that nomination papers may not be rejected on the ground of giving one symbol in place of three as a choice of candidate This defect, on the ground of symbols, has been considered as a technical defect of unsubstantial character and no nomination paper has to be rejected on that ground Under the circumstances the nomination papers of Shri Mehar Singh respondent No 4 Shri Rup Lal respondent No 3 and Shri Lal Chand respondent No 15 were not defective and were not improperly accepted I would therefore, find issues Nos 3 and 4 against the petitioner

Issue No 6—Petitioner has taken objection to the nomination paper of Shri Devinder Singh respondent No 1 on the ground that he had chosen symbol "bow and arrow" for his first preference without the permission of the Returning Officer, and therefore his nomination paper ought to have been considered as incomplete and ought not to have been accepted This Issue was not seriously pressed at the time of arguments and for reasons given in my finding on Issues Nos 3 and 4, the nomination paper of Shri Devinder Singh was quite in order and was properly accepted

Issue No 7—This was not pressed by the petitioner and so is found against him

Issue No 8—Objection has been taken to the four posters issued by or on behalf of respondents Nos 1 and 2 in connection with their election propaganda on the ground that they did not bear on their faces the names and addresses of the Printers and Publishers thereof and this according to the petitioner constituted an illegal practice under section 125(3) which runs as follows

"The following shall be deemed to be illegal practice for the purposes of this Act —

(3) The issuing of any circular, placard or poster having a reference to the election which does not bear on its face the name and address of the printer and publisher thereof"

These posters are

"Bharti Jor Mela"	Ex PW 2/A
"Sharomani Akali Dal de chon nishan Tir Kaman yad rakho"	Ex PW 3/A
"Appeal"	Ex PW 3/B
'Ap da qimti vote panth di amanat hai"	Ex PW 4/A

These are all in Gurmukhi and their English translation has been produced by P.W. 27 Giani Sant Singh and these translations have been marked as Exs. P.W. 2/A/2, P.W. 3/A/2, P.W. 3/B/2, and P.W. 4/A/2, respectively. Poster Ex. P.W. 2/A was published at the Shankar Printing Press Moga, to which Shri Arjan Dev, P.W. 2, testified. This has been issued in the name of S. Mukhtar Singh, M.L.A., Sant Karm Singh, and S. Tara Singh, President, Moga, and relates to a big gathering to be held on the 27th, 28th and 29th of May 1952 the name of the Press is given at the face of the poster. Similarly posters Exs. P.W. 3/A and P.W. 3/B were printed by the Hira Printing Press, Moga, as deposed to by Shri Mohinder Singh, P.W. 3, and were issued by Shiromani Akali Dal and seven named persons respectively. The name of the Press, and the publishers are given in these posters. The poster, Ex. P.W. 4/A was, according to the evidence of Shri Kartar Singh, P.W. 4, printed by the Jagat Printing Press, Moga, by the members of the Akali Jatha, Chirak. The name of the Press, i.e., Jagat Printing Press does appear on the face of this poster also. All these witnesses have also disclosed the names of the persons at whose instance these posters were published and all these, except bear, at the face of the posters, the names of the printing Press. In view of the above, even if all the formalities with regard to the issuing of these posters had not been strictly complied with as required by Section 125(3) of the Representation of the People Act, 1951, i.e., the names and addresses of the Printers and Publishers of these posters do not appear on the face of all these posters, it is to be considered if this will be a ground for declaring the election to be void under Section 100(2)(a) of the Representation of the People Act which runs as follows:

"(2) Subject to the provisions of sub-section (3), if the Tribunal is of opinion—

(a) that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice; the Tribunal shall declare the election of the returned candidate to be void".

It is to be seen whether the name of the press may be taken as the name of the printer and in case where the name of the publisher is not given whether the printer of a poster can be assumed to be publisher thereof. It is further also to be seen whether the omission, of the name of the printer or publisher, has affected the result of the election so as to bring it within the purview of section 100(2)(a) as reproduced above. In this connection the following remark at page 367 by Nanak Chand Pandit in his Law of Elections may be read with advantage:

"The name of the press may be taken as the trade name of the printer; and by "comity and custom of the printing trade" the printer of a pamphlet is assumed to be the publisher also.

Where the omission of the name of the printer or publisher has not affected the result of the election so as to bring it within the purview of section 100(2)(a) the election cannot be declared void on that account".

The petitioner has not led any evidence whatsoever to show that even if these posters are to be tested strictly in accordance with the provision under section 125(3) the election of the returned candidate or candidates has been procured or induced or the result of the election has been materially affected by the omission to give the name of the printer or publisher in any of these posters. In view of the above I will find Issue No. 8 against the petitioner.

Issue No. 9.—This relates to the objection of the petitioner contained in paras. VII(2) and (4) of the petition. Para. VII(2) raises the point that in all the posters and circulars issued for an on behalf of respondents Nos. 1 and 2, the *Nishan of Khanda, Chakar* and two *Kirpans*, which is a purely religious symbol of Sikhs, was prominently published with a view to thereby induce the voters to believe that they will become or will be rendered an object of divine displeasure or spiritual censure if they did not vote for respondents Nos. 1 and 2 who were Panthik candidates. Similarly in Para. No. VII(4) allegations have been made to the effect that respondents Nos. 1 and 2 arranged on the 20th of January, 1952, a big *Dewan* at village Warah, Tehsil Zira wherein Sant Baba Dasaundha Singh, who canvassed and spoke for respondents Nos. 1 and 2, said to the congregation that one, who did not vote for the Panthik candidates (respondents 1 and 2) and will vote for others, will suffer from leprosy.

Taking first the allegations contained in Para. VII(2) it was contended on behalf of the respondents that the Nishan of *Khanda, Chakar* and two *Kirpans*, is not purely a religious symbol of Sikhs and can be used on matters clearly secular and even by Hindus. Some of the witnesses of the petitioner including Giani Sucha Singh P.W. 16 in cross-examination had to admit these although half heartedly. It is a matter of common knowledge that some of the letter heads of Sikh and Hindu gentlemen have these symbols embossed on them. I do not think the mere presence of the symbol of *Khanda, Chakar* and two *Kirpans* on these posters, is an appeal to the voters on the basis of religion and is meant to convey the sense that any person not voting in favour of Panthik candidates would be rendered an object of divine displeasure or spiritual censure. The evidence with regard to the allegations, contained in Para. VII(4), in my opinion, have not been established by any clear, cogent and consistent evidence, beyond reasonable doubt. At any rate, no systematic appeal on the grounds of religion appears to have been made in the constituency on behalf of respondents Nos. 1 and 2 and I would, therefore find Issue No. 9 against the petitioner.

Issue No. 10.—This relates to the allegations, contained in Para. VII(3) of the petition to the effect that all the posters and circulars, which were got printed and published by respondent No. 2 and were widely circulated throughout the constituency before and during the elections with the intention of unduly influencing the voters to vote for respondents Nos. 1 and 2 on the ground of religion alone and refraining them to vote for the petitioner, who sought election on behalf of a secular body like the Congress. In this connection objection is taken to the posters Exs. P.W. 4/A and P.W. 3/B which have been admittedly issued by Shri Devinder Singh, respondent. It may be noted that these posters were issued on behalf of the Akali party or by the candidates of this party which, although communal, has been recognised as a party during the elections. In case they have to appeal to the voters, they have to do so in the name of the party to vote solidly for their candidates. This cannot be held to be objectionable as it does not fall within the mischief of "systematic appeal" on the basis of religion alone. It is a general exhortation to the voters of the constituency and particularly to the members of the Sikh community to vote solidly for the nominees of the Akali party so as to make it clear even to the Congress party that they are solidly behind the Panthik party. As aptly remarked in PEPSU case relating to the election of Shri Hukam Singh, Member Parliament, "we may not approve of the words actually used and say that it would have been better if these posters had been worded more carefully. Yet, taking all these matters into consideration they cannot be held to fall within the mischief of corrupt practice". There is, however, no material to hold that these posters affected the mind of anybody and that the appeal on religious matters, even if it be held to have been made by these posters, materially affected the result of the election.

Poster Ex. P.W. 34/A has not been proved to have been issued by Master Tara Singh nor has it been shown on the record of the case that Master Tara Singh had anything to do with the Akali party. In any case from the evidence of the P.Ws. 6, 11, 12, 13 and 17, it is not established that these posters were distributed or exhibited by or on behalf of respondents Nos. 1 and 2 or by anybody also with their connivance. There is no evidence to the effect that such a poster was meant specifically for this constituency or particularly for respondents Nos. 1 and 2, and there is no satisfactory evidence to the effect that respondents Nos. 1 and 2 or their agents distributed this poster to the voters or pasted the same on the walls in the Constituency. This poster appears to have been published in Amritsar and even if it was distributed in other constituencies it does not necessarily follow that it was distributed in this Constituency on such a scale that it will be called a systematic appeal on the ground of religion. The evidence of P.Ws. 13 and 14, who say that they were greatly influenced after reading this poster, is not of much importance and does not matter any serious notice. My view is supported by the remarks of the learned Members of the Election Tribunal, Patiala, in case, Shri Sardul Singh Caveeshen Versus Shri Hukum Singh and others, decided on 12th of May, 1953, in which similar objections had been raised against the Election Propaganda done on behalf of respondents 1 and 2, the Akali Candidates for both the General and Reserve Seat of Parliament, by making systematic appeals on the ground of religion and exercising undue influence on the voters. After giving an exhaustive discussion of the various objectionable portions, it has been held in that case that this Propaganda did not offend the Election Law in any manner and although the Communal Spirit displayed in the Propaganda was not approved. Following the principles laid down in the above ruling, I would, therefore, hold that the petitioner has failed to prove this Issue, and would therefore, find this issue against the petitioner.

Issue No. 11.—This Issue arises as a result of allegations contained in Para. No. VII(5) of the petition. The evidence produced by the petitioner in support of this is, besides being vague and inconclusive, of partisan character. No reliance can be placed on the evidence of the witnesses produced in support of these allegations. The allegations of coercion and undue influence falling within the category of corrupt practice being by nature of a criminal charge, require a higher standard of proof. The evidence produced by the petitioner in support of the same is far from satisfactory and does not come up to that standard. It is not difficult for influential people like the petitioner, who are out to fight out elections, to get hold of a few witnesses to make statements to the effect that they have been beaten and abused by the opposite party and then to get a report of the occurrence lodged with the police and manage to secure in some cases a medical certificate about the injuries as well. I have carefully perused the evidence produced by the petitioner in this connection and I am not satisfied with it. I would, therefore, find Issue No. 11 against the petitioner.

Issues Nos. 12 and 13.—The learned counsel for the petitioner did not press these issues at all and so these are decided against the petitioner.

Issue No. 14.—The objection, in this Issue, relates to the employment of respondent No. 2 of certain person as a Clerk and another as a messenger. The omission of respondent No. 2, to mention clearly in the relevant voucher whether Shri Ranjit Singh was a Clerk and whether Shri Kirpal Singh was a messenger, is of no material affect, and the objection of the petitioner does not in any manner amount to any serious defect or a deliberate falsehood in the return of election expenses. At any rate this does not merit any serious notice. There is no material to justify the conclusion that the return of election expenses, filed by respondent No. 2, was materially wrong. I would, therefore, decide this Issue against the petitioner.

In view of the above findings, I would accept this petition and declare the election to be wholly void with the result that both the returned candidates, i.e., Shri Devinder Singh, respondent No. 1 and Shri Mukhtar Singh, respondent No. 2, will be unseated.

As the election in this case is being avoided on account of the improper acceptance of the nomination papers of the two respondents Nos. 8 and 10, to which no objection had been taken before the Returning Officer, and the petitioner had failed in almost all other issues relating to corrupt and illegal practices, I think, it will be in the interests of justice to direct that the parties in this case be left to bear their own costs, and I order accordingly.

The 24th June, 1953.

(Sd.) P. N. SACHDEVA, Advocate-Member,
Election Tribunal, Ludhiana.

Shri Rattan Singh Versus Shri Devinder Singh etc.

ORDER

(PER HARBANS SINGH, Chairman)

I have the advantage of discussing the various Issues with my learned colleague Shri Parmanand Sachdeva, and of going through the order proposed by him. I am in respectful agreement with his findings on all Issues except Issues Nos. 2 and 5. With all respect I find myself unable to agree with the findings on the last mentioned two Issues.

2. It is not denied that Shri Sadhu Ram was a member of the Rice Association which was under contract with the Punjab Government, for the purchase of paddy and for getting the same husked and supplying the rice to the Government or to such other persons as may be directed by the Government. The various Tribunals have taken a conflicting view as regards the question whether such contracts fall under section 7(d) of the Representation of the People Act or not. These authorities have been discussed in the judgment of this Tribunal in Case, Shri Ram Chand Versus, Shri Wadhawa Ram, reported in the Gazette of India Extraordinary dated the 19th of April, 1953, at page 1129. The view held by the Tribunal was that the procurement and fair distribution of foodgrains and other essential goods was a service undertaken by the State, and consequently the rice dealers working under this scheme would be carrying on services undertaken by the Government and would thus come within the mischief of Section 7(d). In view of the evidence on the record and the view of the Law, taken by this Tribunal in the case noted above, it is obvious that Shri Sadhu Ram was disqualified from standing as a member.

3. So far as Shri Bachitar Singh is concerned he was only under a contract for transporting wheat from Smalsar to Kasubegu and Smalsar to Moga. It was argued by the learned counsel that this was not the type of the contract which could be hit by the provisions of Section 7(d) because Shri Bachitar Singh was in no way performing any service which had been undertaken by the State, but, was engaged in carrying on certain work, ancillary to the main service so undertaken. Argument of the opposite side, however, is that 'supply of wheat was a service undertaken by the Government and it was as a part of that service that wheat had to be transported from various Mandis to the Central godowns at Moga and if, instead of doing this transport business itself, the State Government entrusted that work to somebody else to do under contract, such a person would be treated as under contract to perform the services undertaken by the State. Though I do entertain some doubts as to whether such contracts strictly fall under Section 7(d) or not, yet it is not necessary to go into this question in detail in the light of the view that I take about the material effect of the acceptance of the nomination papers of Shri Bachitar Singh and Shri Sadhu Ram, even if it be taken that the same were wrongly accepted.

4. Clause (c) of Sub-Section (1) of Section 100 is in the following term:

- (c) that the result of the election has been materially affected by the improper acceptance or rejection of any nomination.

It is clear that for an election to be declared wholly void, it is not only necessary to prove that a nomination paper was rejected or accepted improperly but the petitioner has also to prove that the wrongful acceptance or rejection has materially affected the result of the election. The effect of this provision was discussed at length by Jaipur Tribunal in case Pandit Harish Chandra Versus Raja Man Singh and others, notified in the *Gazette of India Extraordinary*, dated April 24, 1953. Referring to the decision of Bikaner Tribunal reported in *Rajasthan Gazette Extraordinary*, dated February 1, 1953, page 985, the following observations were quoted with approval:

"It follows from the trend of the judgments of the various Tribunals, which we have had the advantage to go through very carefully, that it becomes a question of fact in each case depending upon the evidence led by the parties, whether this presumption has been rebutted or not. To hold otherwise would be to replace the provisions of section 100(1)(c) of the Representation of the People Act, 1951, with our own which the Legislature never intended. A contrary view appears to have been taken by the Lucknow Tribunal in the case of Brijnaresh Singh Versus Hon'ble Thakur Hukum Singh and others.which has come to a conclusion that in the case of improper rejection of a nomination paper, it is impossible to prove that the result of the election has or has not been materially affected. It has further held that the condition precedent to the declaration of the election as void, mentioned in clause (c) of Sub-Section (1) of Section 100 of the Representation of People Act, 1951, is not only superfluous, but is incapable of fulfilment, and as such an improper rejection of a nomination paper wholly avoids the election. In view of the interpretation put by this Tribunal, it has been suggested that the Legislature should take an early opportunity to remove all doubts by amending Section 100(1)(c) of the Act. With all due respect, we are unable to agree with this view as the words of Section 100(1)(c) do not go so far as to convey this idea".

5. The Jaipur Tribunal came to the conclusion that the words of Section 100(1)(c) would indicate that even in case of improper rejection, material effect is to be proved but that in view of the consensus of opinion of the various Tribunals and Election Commissions since 1921 an initial presumption does arise on the principle of *stare decisis* and it requires strong and convincing evidence to rebut it. The ratio decidendi of all such cases, which raise a presumption in case of improper rejection, is that by the rejection of the nomination paper, the entire electorate is deprived of an opportunity of exercising their franchise in favour of a candidate of their own choice. It is because of this obvious consequence resulting from the improper rejection that the Tribunals raised a presumption that the result was materially affected unless it was shown otherwise. Such a presumption can never arise in case of a wrongful acceptance and one should be very reluctant to raise any such presumptions or come to a finding that the result has been materially affected, on mere conjectures or possibilities because "the setting aside of an election is a very serious matter as a good deal of time and money, which is spent,

is spent invain". In the present case the votes obtained by the relevant candidates were as follows:-

1. Shri Devinder Singh	...	...	19,429
2. Shri Ratan Singh	...	...	18,492
3. Shri Bachitar Singh	...	...	2,023
4. Shri Sadhu Ram	...	...	932

These were the four rival of the candidates for the General Seat, out of whom Shri Sadhu Ram and Shri Bachitar Singh must be taken to be disqualified. The difference of votes, polled by Shri Devinder Singh and Shri Ratan Singh was 937. Evidence was led on behalf of the petitioner, Shri Rattan Singh, that had Shri Sadhu Ram and Shri Bachitar Singh been not in the field, the voters, who had supported him, would have cast their votes in favour of the petitioner and thus the votes, polled by him would have exceeded those polled by Shri Devinder Singh and the result of the election would thus have been affected. This evidence is of a very vague type. Shri Sadhu Ram stated that in case his nomination papers had been rejected and he was not in the field, he and his supporters would have supported the candidature of the petitioner. He had no idea wherefrom he secured his 932 votes but he believed that "those of us working in Mandi at Moga would have supported Shri Ratan Singh because he also belongs to Moga Mandi". A similar type of statement was given by Shri Bachitar Singh. He stated that he must have got more votes from Moga proper and that if he had not been in the field he and his supporters would have supported the petitioner. There is evidence on the record indicating that Shri Sadhu Ram was a Jan Sangh Candidate and Jan Sangh candidates were opposed to the Congress. They normally joined hands with any other party but the Congress and it is to be noted that the petitioner was a Congress nominee. The statement of Shri Sadhu Ram that he and his supporters would have supported the petitioner, cannot, therefore, inspire confidence. In any case the evidence of both these witnesses is too vague and cannot be given much weight. They are not even sure wherefrom they got the maximum support and it is improper to draw any inference from their statements as to whether the votes cast in their favour or a major portion thereof would have gone to the petitioner, and in fact my learned colleague did not rely on this evidence in coming to the finding that the result has been materially affected.

6. The sum and substance of the arguments, which have appealed to my learned colleague, is that where the total number of votes, polled by the candidate, whose nomination paper was improperly accepted, exceeds the difference between the successful candidate and the next rival candidate, it must be presumed that the result of the election has materially been affected. This is the principle laid down in the Bhagalpur case which has been relied upon.

7. One of the earliest case on the point is the Belgaum District (N.M.R.) case reported in Hammond's Indian Election Cases, Volume II, at page 45, as under:

"The votes recorded for the different candidates were as follows:

1. Mr. Dalvi	...	...	8,661
2. Mr. Angadi	...	...	7,157
3. Mr. Chikodi	...	...	6,676
4. Mr. Lathe	...	...	4,917"

The first two were declared elected and the contention was that the nomination paper of Mr. Lathe was wrongly accepted and if he had not been in the field the result would have been materially affected. The learned Commissioners in that case, at pages 47 and 48, after bringing out the distinction between the case of improper rejection and acceptance, made the following observations:

"The votes given to Mr. Lathe might have been given to Mr. Chikodi, if Mr. Lathe's nomination had not been accepted by the returning officer, but on the other hand they might have been given to either of the two Returned Candidates. Under these circumstances the Commissioners think that onus rests very heavily on the petitioner of proving by affirmative evidence that all or large number of Mr. Lathe's votes would have come to Mr. Chikodi..... It was contended that the difference between Mr. Chikodi and the second returned candidate Mr. Angadi was only 481, it should be presumed that Mr. Chikodi would have been able to get more than that number and that this was enough to shift the onus on to the respondents of proving that

the result of the election was not materially affected..... the petitioner must satisfy the Tribunal that the result of the election was as a fact materially affected. not merely that it might have been so affected."

8. On these findings the Commissioners held that the result was not materially affected. In the Bhagalpur case reliance was mainly placed on Hoshiarpur West General case, Shri Moola Singh *Versus* Shri Mangoo Ram and others, reported in Doabia Indian Election Cases. Volume II, page 268, and on an observation made by the Commissioners in Belgaum District (N.M.R.) case, referred to above. The observation relied upon was as follows:

"Majority of the Commissioners were inclined to hold that it would not be proper to allow evidence to be adduced by the petitioner or anybody else to show that one or other of the candidates would have got Mr. Lathe's votes or any of them."

From this, it is inferred by the Tribunal in Bhagalpur case that no evidence can be led to show to whom the votes of the disqualification person would have gone, and because such evidence cannot be led, it was considered proper to give a finding of the result having been materially affected, merely on the suggestion that the result was likely to have been materially affected. The very next few lines in the judgment in Belgaum case, however, make it clear as to the ground on which the majority of the Commissioners were inclined to take the view stated above and these are as follows:

"They think that Mr. Lathe's disqualification was a patent fact to which the electorate must be held in law to have been aware. The electors were aware that Mr. Lathe was a member of the Legislative Assembly."

It is obvious, therefore, that the learned Commissioners in Belgaum Case were thinking of the principle of "thrown away" votes rather than of any difficulty much less impossibility in adducing affirmative evidence to show that the votes, secured by the disqualification person, would have gone to somebody else. In Bhagalpur case it was observed as follows:

"That being so, no affirmative evidence could be adduced by the petitioner to show that the votes secured by Kedarnath Sinha would have gone to him. Hence it is impossible to place an onus upon him which he cannot discharge"

9. With all respect I cannot agree with the above observation. In the first instance, as discussed above, the basis for drawing this inference was an observation made in Belgaum's N.M.R. case which was not taken in its proper context; and secondly the mere fact that it is difficult to discharge the onus of showing that the result has been materially affected, is no ground for ignoring the express words of the statute, or for raising a presumption, unwarranted by evidence, that the result must have been affected.

10. There is again some difference of opinion as to what is the meaning of the "result" having been "materially affected".

11. In Bellary M.R. case "S. Abdul Razack Sahib Bahadur *Versus* Hajee Mohammad Ismail" reported in Doabia's Indian Election Cases, Volume I, at page 169, following the views expressed in Ganesh Krishna *Versus* Mandevvarao, case reported in J. N. Volume III, at page 186 it was observed as follows:

"the words 'the result of the election' meant the names of the candidates in the order of the poll with the number of votes polled for each and they interpreted the words 'materially affected' to mean that the majority of the returned candidates would have been materially reduced. It is conceded, I think, that in order to prove that the result of the election was materially affected it is not necessary to prove that the successful candidate would not have been elected but for the practice found to have been corrupt and that it is sufficient if it is proved that his majority would have been substantially reduced."

This is rather an extreme view and would mean that even where the difference between the votes polled by the successful candidates and the next rival candidate is greater than the number of votes polled by the disqualification candidate, the result might be said to have been materially affected. But even in Bellarey's case the Commissioners held that in any case it must be proved by positive evidence that the majority of the votes polled by the successful candidate would have been substantially reduced. Inspite of the fact that the method of voting, adopted in

that election made it impossible for the petitioner to show how the votes improperly cast were polled, yet the Commissioners held that the petitioner must be held to have failed to establish that the result was materially affected. Incidentally this view runs counter to the view taken by the Bhagalpur Tribunal that the impossibility of furnishing proof would be a good ground for raising a presumption that the result has been materially affected.

12. The exact meaning of the words "result" and "materially affected" were not directly discussed in Hoshiarpur case, but it was observed as follows:

"The question whether or not the result has been materially affected must always be a question of fact to be determined on the facts of each particular case and no fast and hard rules for determining this can possibly be laid down. What is required is that the Commissioners must on the material on the record and the surrounding circumstances come to the conclusion that by the improper acceptance of the nomination paper of a particular candidate the result *in all probability* would have been different."

13. The use of the words "in all probability" was not approved by Bhagalpur Tribunal. The view taken by the later was that except in one solitary case, where the votes polled by the disqualification candidate are less than the difference between the successful candidate and the next rival candidate, it must be *presumed* that the result has been materially affected. The relevant observations are as follows:

"If the number of votes secured by the candidate whose nomination paper has been improperly accepted is lower than the difference between the number of votes secured by the successful candidate and the candidate who has secured the next highest number of votes, it is easy to find the result has not been materially affected. If, however, the number of votes secured by such a candidate is higher than the difference just mentioned, it is impossible to foresee what the result would have been if that candidate had not been in the field. It will neither be possible to say that the result would actually have been the same or different nor that it would have been in all probability the same or different."

However, there is no warrantee in the decided cases for raising any such presumption, in case of wrongful acceptance and to do so would be opposed to the very wordings of the Act. If this view were to be accepted we shall have to read clause (c) of Section 100 as containing the words:

"The result of the election might have been materially affected."

instead of the existing words, *viz.*,

"The result of the election has been materially affected."

The words used in this Sub-clause clearly place the burden of proving that the result has been affected on the petitioner but if Bhagalpur view is accepted, then the burden is on the successful candidate to show that the result has not been materially affected; because where the votes polled by the disqualified candidate are less than the difference between those polled by him and the next candidate, it is *positively* established that the result could not have been materially affected and in all other cases the petitioner need not prove anything because the presumption is sought to be raised in his favour and it is for the respondent to prove that the result has not been affected.

14. Vindhya Pradesh Tribunal, in *Shri Udaianath Singh Versus Shri Jagat Bahadur Singh*, reported in the *Gazette of India Extraordinary* Part II dated April 5, 1953, did not agree with the view taken in Bhagalpur case. In paragraphs 17 and 18 of the Order of the Vindhya Pradesh Tribunal, Patna West (N.M.R.) Hammond's Election case at page 533 was discussed where it was held:

"that the result of the election cannot be said to be materially affected unless the irregularities actually turned the scale in favour of the returned candidate."

It was also observed:

"In England it was once held on the authority of Hackney case that the result of the election should be held to be materially affected for the reasons as have been referred to in the Bellarey M. R. case already adverted to. But later this view was dissented from."

15. Bengal Legislative Council case (*R. B. S. N. Sinha Versus D. A. Roi and others*) reported at page 368 of Doabia's Indian Election Cases (1935-1950, Volume II), was also referred to wherein Patna West N.M.R. case finds full support. It was pointed out that the difference between the Ballot Act 1872 and Indian enactments have sometime been overlooked in earlier cases.

16. In paragraph 19, it is further observed:

"We are, therefore, of the opinion that the petitioner must prove in this case that respondent No. 1 would not have succeeded in the election if the disqualified candidate, respondent No. 2, was not in the field. In other words if this is not proved by legal materials on the record and due consideration of relevant circumstances, we would be unable to hold that the result of the election was materially affected in this case."

The evidence laid in that case was more or less of the same type as in this case and it was held that this evidence was of a speculative nature and could not be helpful in the decision of the case. It was further observed:

"The standard of proof cannot be slackened in favour of the party because the matters required to be proved happen to be very difficult to be proved. We shall certainly take in account all surrounding circumstances and form our opinion on legal evidence..... but respectfully we have no hesitation in saying that we are not prepared to go so far as the Bhagalpur Tribunal suggests According to this decision, because it is impossible for a petitioner to discharge the onus placed upon him, it should be deemed to have been discharged, for the law cannot expect the performance of the impossible. Firstly it cannot be postulated that such task was impossible. Secondly, however, difficult it may be a matter has to be proved legally in a Court of Law by such direct or circumstantial evidence as may be available."

17. With all respect I feel that the view taken by the Vidhya Pradesh Tribunal, as given above, is the only correct view to be taken of the law. Even in Hoshipur case (referred to above) the Commissioners did not merely presume from the difference of the votes that the result must have been affected but the evidence on the record was actually taken into consideration and it was observed as follows:

"We have the admission of respondent No. 1 (Ch. Mangu Ram) in cross-examination that all the votes cast in favour of Ch. Mehar Chand, the disqualified candidate were entirely due to his having been given Congress Ticket, and that if S. Mula Singh had secured the Congress Ticket the votes cast in favour of Ch. Mehar Chand would have gone to him. Further, S. Mula Singh had, in 1937 elections, been given the Congress Ticket and in all probability if Ch. Mehar Chand's disqualification had been known he would have secured the congress nomination for the reserved seat and as such there can be no doubt that the result of the election would have been different."

18. In the present case the only material from which any inference can be drawn is as follows:

(1) That the difference between the votes of Shri Devinder Singh and Shri Ratan Singh was 937 and the votes cast by the two disqualified candidates were 932 by Shri Sadhu Ram and 2023 by Shri Bachitar Singh.

(2) Statement by Shri Sadhu Ram as follows:

"I have no idea wherefrom I secured my 932 votes but those of us working in Mandi at Moga would have supported Shri Ratan Singh because he also belongs to Moga Mandi."

and (3) Statement by Shri Bachitar Singh as follows:

"I must have got more votes from Moga proper and if I had not been in the field I and my supporters would have supported the petitioner"

19. As against this there are following circumstances going against the likelihood of the result having been affected:

(a) That Shri Sadhu Ram was a Jan Sangh Candidate and Jan Sangh was opposed to the Congress and Shri Ratan Singh was a Congress nominee, and consequently voters who supported Shri Sadhu Ram were not likely to support the petitioner and the statement of Shri Sadhu Ram that he and his supporters would have voted for the petitioner seems to be incorrect.

(b) In any case, according to Form '14' wherein the valid ballot papers, recovered from the ballot boxes of different candidates from the various booths have been given (which was sent for by the Tribunal for perusal) indicates that from 23 polling booths in Moga Town he secured only 297 votes.

(c) Although Shri Bachitar Singh claimed to have more votes from Moga proper, yet a reference to Form '14' indicates that from 23 polling booths at Moga he got only 121 votes in all.

20. From the above material it is clear that hardly any reliance can be placed on the statements of Shri Sadhu Ram and Shri Bachitar Singh and even if their statements, that those from Moga Mandi would have voted for the petitioner are accepted at their face value, that would only make an addition of 418 votes to those polled by Shri Rattan Singh and would not have therefore, materially affected the result of the election. But, as I have stated above, the evidence of Shri Bachitar Singh and Shri Sadhu Ram and others, is of purely a conjectural nature and is absolutely of no use for drawing any inference or even for saying "that in all probability the result would have been affected".

21. I am, therefore, of the view that the weight of the decided cases is definitely in favour of treating a wrongful acceptance on an entirely different basis from a wrongful rejection and the presumption that has come to be raised in favour of the result having been materially affected in case of a wrongful rejection, more on a principle of *stare decisis*, cannot be raised and should not take the place of affirmative proof in case of wrongful acceptance. There is no authority for the proposition that if the total number of votes polled by the disqualified candidate or candidates exceed the difference between the successful and the next rival candidate, a presumption must arise that the result has been materially affected. Bhagalpur case is the only one which seeks to lay down this proposition and with all respect the same is based on incorrect inferences and on observations which have not been taken in their proper context. The view taken in the Belgaum's case, Hoshlarpur case and Vindhya Pradesh case, as discussed above, that there must be positive proof of the result having been affected, is the only correct view and I respectfully follow the observations and the principle laid down in the Vindhya Pradesh Tribunal, and hold that the result has not been materially affected by the wrongful acceptance of the nomination papers of Shri Sadhu Ram and Shri Bachitar Singh. Here I may also point out that in the matter of setting aside the election, the weighty observations of Baron Martin in the Warrington case cited in 1920 Calcutta page 669 at page 670 must not be lost sight of:

"I adhere" said Baron Martin in the Warrington case "to what Willies, J., said at Lichfield that a Judge, to upset an election, ought to be satisfied beyond all doubt, that the election was altogether void, and that the return of a member is a serious matter and not to be lightly set aside".

22. In the light of the view taken by me above, it is not necessary to discuss in detail the argument raised by the learned counsel for the respondent that the votes polled in favour of the two disqualified candidates should be treated as "thrown away votes" because the disqualifications from which they suffered were well known in the Constituency. However, I am of the view that there is a good deal of force in this argument as well.

23. The Constituency consists of Dharamkot-Moga and the surrounding villages. According to the evidence of Shri Arjan Singh, District Food Controller, Shri Sadhu Ram was in contract with the Punjab Government long before the date of the nomination and the same was the case with Bachitar Singh, who got the contract for transport, after open tenders had been duly invited. The fact of transport of wheat in open trucks from Smalsar to Kasu Begu may not possibly be known to the voters in the Dharamkot-Moga Constituency but so far as transport of wheat from Smalsar to Moga Store Houses is concerned that could not remain a secret from the people in general and particularly those of Moga and surrounding areas with whom Shri Bachitar Singh or Shri Sadhu Ram could be expected to have had influence. The fact of Shri Sadhu Ram dealing in rice as a member of Rice Association and Shri Bachitar Singh transporting Government wheat was a patent fact and was not of a type which could not be known to people, and, therefore, would be treated on a different basis than a latent disqualification, e.g., being below the age of 25 as was the case in Tangail South Muhammadan Rural Constituency reported in Sen and Poddar at page 790. These disqualifications of Sadhu Ram and Bachitar Singh were more of the type of one in Belgaum Case, where the Candidate was a member of the legislature.

24. Some 21 witnesses were produced on behalf of the respondents from various villages and different walks of life including Shri Devinder Singh himself all of whom stated that the fact of Shri Sadhu Ram being a member of the Rice Association and Shri Bachitar Singh being under contract for transport of wheat was generally known. Shri Sain Dass R.W. 17 was a Jan Sangh candidate from the reserved seat while Shri Sadhu Ram was a Jan Sangh candidate from the reserved seat and he definitely deposed to the effect that he and other electors fully knew about Shri Sadhu Ram being in contract with the Government and the same thing was known about Shri Bachitar Singh. The mere fact that neither of the two contesting respondents raised the objection at the time of scrutiny that Shri Sadhu Ram and Shri Bachitar Singh were disqualified, is of no importance. Admittedly even the petitioner did not raise this objection and in fact they may have all been in doubt about the legal position as the question whether such contracts did amount to a disqualification or not was far from clear because, as stated above, even some of the Election Tribunals have held that such contracts do not entail disqualification. Shri Bachitar Singh as his own witness admitted in cross-examination that even upto date he did not consider that his being engaged in transport of wheat was a disqualification.

25. Reference was made to the fact that in the written statement the respondent denied the factum of Shri Sadhu Ram and Shri Bachitar Singh being under contract with the Government and, therefore, disqualified. The relevant paragraph in the petition namely paragraph VI Sub-paragraphs (2) and (6) contained an allegation of fact that Shri Sadhu Ram and Shri Bachitar Singh were engaged members of the Rice Association and transport respectively as well as the effect of such contract was that they were disqualified. In the reply all that was stated was that the correctness of these relevant paragraphs was not admitted and was denied. This reply of the respondents, therefore, does not necessarily imply the denial of the factum of these two persons being engaged as alleged. Apparently it is for this reason that when the respondents were in the witness box they were not confronted with this so called contradictory position in the written statement. In evidence, right from the beginning the position taken up by the respondent was that the fact of Shri Sadhu Ram and Shri Bachitar Singh being in contract with the Government was well known.

26. For the reasons given above, I would hold under Issues Nos. 2 and 5 that although Shri Sadhu Ram and Shri Bachitar Singh, being under contract with the appropriate Government, were disqualified to stand as candidates under Section 7(d) of the Representation of the People Act, 1951, and their nomination papers were improperly accepted, yet I hold that this wrongful acceptance of their nomination papers has not materially affected the result of the election. In view of these findings and the findings, given on other Issues by my learned colleague, with which I concur, this petition must fail and the same is dismissed.

In the circumstances of the case, however, I would leave the parties to bear their own costs.

The 24th June, 1953.

(Sd.) HARBANS SINGH, Chairman,
Election Tribunal, Ludhiana.

Shri Ratan Singh

Vs.

Shri Devinder Singh.

ORDER

(Per HANS RAJ KHANNA, Judicial Member).

I respectfully agree with the Order proposed by my learned colleague, Shri Parmanand Sacndeva I may, however, add a few words with regard to points raised in Issues Nos. 2 and 5.

Shri Sadhu Ram, respondent No. 8, was a partner of Rama Rice Association at the time when he filed the nomination papers and on the date of scrutiny. The Rama Rice Association Moga had entered into a contract with the Punjab Government for supply of rice both before and during the days of election. Shri Sad Ram was also a member of the Wheat Association Moga during the days of election and the aforesaid Association during those days was under a contract with the Punjab Government for the supply of wheat. In view of these facts and in view of the dictum laid down in the case Shri Ram Chand Vs. Shri Wadhawa Ram, decided by the Tribunal, Shri Sadhu Ram must be held to be disqualified for being chosen to the Punjab Legislative Assembly. I, therefore, hold that the nomination papers of Shri Sadhu Ram were improperly accepted.

Shri Bachitar Singh as P.W. 6 stated that during the days of election he was under a contract with the Punjab Government for transport of wheat between various Stations in Ferozepore District Including Smalsar to Kasu Begu and Smalsar to Moga. Ex. P.W. 6/A is the original contract entered into by Shri Bachitar Singh with the Punjab Government through the District Food Controller. The petitioner also produced P.W. 9. Shri Arjan Singh, District Food Controller, who corroborated the statement of Shri Bachitar Singh. Shri Arjan Singh also added that the contract, entered into by Shri Bachitar Singh, was actually performed by him in accordance with its terms and that payment were made to Shri Bachitar Singh accordingly. In my opinion the evidence of Shri Bachitar Singh and Shri Arjan Singh and the agreement Ex. P.W. 6/A show that there was subsisting contract between the Punjab Government and Shri Bachitar Singh for transport of foodgrain.

The second question that arises is whether the above contract disqualified Shri Bachitar Singh from seeking election under section 7(d) of the Representation of the People Act, 1951.

The petitioner's case is that Shri Bachitar Singh had interest in a contract for the performance of service undertaken by the Punjab Government. This Tribunal has already held in the election petition Shri Ram Chand Vs. Shri Wadhawa Ram, that the supply and distribution of foodgrains was a service undertaken by the Punjab Government. The reasons for coming to that conclusion need not be repeated. Shri Bachitar Singh having entered into a contract with the Punjab Government for transport of wheat, which was a service undertaken by the Punjab Government, in my opinion, Shri Bachitar Singh was disqualified to stand under section 7(d) of the Representation of the People Act. His nomination papers are, therefore, held to have been improperly accepted.

The next question, that arises, is whether the improper acceptance of the nomination papers of Shri Sadhu Ram and Shri Bachitar Singh can be deemed to have materially affected the result of the election.

It is urged by the learned counsel for the respondents that the votes cast in favour of Shri Sadhu Ram and Shri Bachitar Singh should be deemed to be "thrown away votes". The argument of the learned counsel is that the fact that Shri Sadhu Ram and Shri Bachitar Singh were having contracts with the Punjab Government, was very well known to the general public and the voters knew that both these respondents were disqualified from standing. If the voters knowing fully well, that both Shri Sadhu Ram and Shri Bachitar Singh were not qualified to stand, voted for them, those voters, concludes the learned counsel, must be deemed to have deliberately wasted or thrown away their votes.

The important question which needs adjudication, therefore, is whether the fact was well known that Shri Sadhu Ram and Shri Bachitar Singh, were disqualified to stand. The learned counsel for the respondents has, in this connection, relied upon the testimony of a very large number of witnesses, produced by the respondent who have deposed that they knew that both Shri Sadhu Ram and Shri Bachitar Singh were having contracts with the Punjab Government. They have also deposed that this fact was well known to the general public. In order to judge the truth of the evidence led by the respondents, it would be useful to refer to the petition and the written statements of respondents Nos. 1 and 2. In para VI of the petition it is stated that Shri Sadhu Ram was a partner in firms known as Rama Rice Association and Wheat Association Moga which Firms were under contracts with the Punjab Government for supply of foodgrains. In the same para, it is also alleged, that Shri Bachitar Singh respondent was under contract with the Punjab State for transport of woods on the routes from Smalsar to Moga and Smalsar to Kasu Begu. The allegations in para VI of the petition were denied by both respondents 1 and 2 and were not admitted to be correct. The position thus taken by both the respondents was that they did not admit that Shri Sadhu Ram and Shri Bachitar Singh were having the above mentioned contracts with the Punjab Government. The denial of the respondents shows that they were not sure whether Shri Sadhu Ram and Shri Bachitar Singh held the aforesaid contracts and that they put the petitioner to proof of the same. If the facts had been so well known as the evidence of the respondent's witnesses would have us to believe, it is difficult to believe that the respondents Nos. 1 and 2, who were directly affected thereby, would have remained ignorant of that fact. The fact that no objections were raised to the nomination papers of either Shri Sadhu Ram or Shri Bachitar Singh at the time of scrutiny, also tends to show that even the candidates did not know of the disqualifications of Shri Sadhu Ram and Shri Bachitar Singh, not to speak of the general mass of voters. In any case, if the respondents Nos. 1 and 2 were originally unaware of the contracts of Shri Sadhu Ram and Shri Bachitar Singh, it is difficult to believe that they

would have continued to remain unaware of this fact after the present election petition had been filed and a copy thereof had been supplied to the respondents. The position of respondents Nos. 1 and 2 seems to be that though the general public knew it fully well that Shri Sadhu Ram and Shri Bachitar Singh were disqualified to stand, the respondents Nos. 1 and 2, who were directly affected thereby, remained ignorant of this fact. In my opinion it is difficult to accept the evidence of the respondents' witnesses on this point when not only there is no plea to this effect in the written statement but also because the evidence runs counter to the plea infact taken by the respondents.

I would, therefore, hold that the respondents Nos. 1 and 2 have not been able to prove that it well known to the general public that Shri Sadhu Ram and Shri Bachitar Singh were disqualified from being elected to the Punjab Legislative Assembly. It has been laid down in case Tangail South Muhammadan Rural Constituency 1946 reported at page 790 of Sen and Poddar as under:—

- (2) "Notice to voters of candidates want of qualification, so as to render votes cast in his favour liable to be "thrown away", require: (a) greatest possible publicity by advertisement, affixing at prominent places etc., and (b) evidence that voters voted in perverse manner, i.e., after due notice."

It is clear from the above case that in order to invoke the doctrine of "thrown away votes", one has to show that there was the greatest possible publicity and that the voters cast their votes inspite of that fact. In the present case, none of these circumstances has been shown to exist. In my opinion, therefore, the votes cast in favour of Shri Sadhu Ram and Shri Bachitar Singh, cannot be deemed to be thrown away votes.

In view of my above finding it is not necessary to decide the objection of the learned counsel for the petitioner that the respondents cannot be permitted to advance the doctrine of thrown away votes when no such plea was raised by the respondents in the written statements.

The next important question that arises for consideration is whether the result of the election should be deemed to have been materially affected by the improper acceptance of the nomination paper of Shri Sadhu Ram and Shri Bachitar Singh. Shri Devinder Singh, respondent No. 1 who was elected from the General Seat, secured 19,429 votes while Shri Ratan Singh petitioner secured 18,492 votes. There was thus a difference of 937 votes between the successful and the unsuccessful candidates. In the reserved seat Shri Mukhtar Singh, respondent No 2 secured 16,439 votes while Shri Sohan Singh, the next candidate, secured 15,907 votes. There was thus a difference of 532 votes between them. The votes polled by Shri Sadhu Ram, respondent numbered 932 while those polled by Shri Bachitar Singh numbered 2023. The total number of votes, that were cast in favour of Shri Sadhu Ram and Shri Bachitar Singh, whose nomination papers were improperly accepted, thus came to 2955.

In the case of an improper rejection of a nomination paper, presumption arises that the result of the election has been materially affected thereby. In case where nomination papers have been improperly accepted normally no such presumption arises, but where the votes, cast in favour of a person, whose nomination papers were improperly accepted, exceed the difference between the number of votes cast in favour of the successful candidate and those cast in favour of the candidate securing the next highest number of votes, as in the present case, in my opinion, a presumption would also arise that the result of the election has been materially affected. The reason for that is that it is difficult for a Tribunal to speculate with regard to the attitude of the voters in circumstances different from those in which they actually cast the votes. In the case of an improper rejection of a nomination paper the result of the election is held to be materially affected because the Tribunal cannot speculate as to what the voters would have done if the candidate, whose nomination papers had been rejected, were in the field. Likewise it is difficult for the tribunal to speculate as to what way the voters who cast their votes in favour of the candidate, whose nomination papers were improperly accepted, would have voted, if that candidate had not been in the field.

It is true that there is a conflict of authorities on the subject. The learned counsel for the respondents had relied upon a case decided by the Vindhya Pradesh Tribunal reported on page 1063 of the 1953 Gazette of India. This case and the cases, cited therein, do support the contention of the learned counsel for the respondents. The counsel for the petitioners, however, relied upon a case decided

by Bhagalpur Tribunal and the cases cited therein. It has been laid down by Bhagalpur Tribunal in case reported on page 233 of 1953 Gazette of India:

"If, however, the number of votes secured by such a candidate is higher than the difference just mentioned, it is impossible to foresee what the result would have been if that candidate had not been in the field. It will neither be possible to say that the result would actually have been the same or different nor that it would have been in all probability the same or different."

In my opinion the Bhagalpur Tribunal lays down the correct principles of law, and for the reasons given above, I prefer to follow the reasoning given in this case.

I have held above that there arises a presumption on the facts of the present case, that the result of the election has been materially affected. The respondents led no evidence to rebut this presumption, except to say that the votes cast in favour of Shri Sadhu Ram and Shri Bachitar Singh should be deemed to be thrown away votes. I have already decided the question of thrown away votes against the respondents. On the contrary the petitioner has produced Shri Sadhu Ram and Shri Bachitar Singh who have stated that if their nomination papers had not been accepted, they and their supporters would have supported the petitioner. Therefore, hold that the result of the election has been materially affected by the improper acceptance of the nomination papers of Shri Sadhu Ram and Shri Bachitar Singh.

The 24th June, 1953.

(Sd.) HANS RAJ KHANNA, Judicial-Member,
Election Tribunal, Ludhiana.

Shri Rattan Singh

Vs. Shri Devinder Singh etc

ORDER OF THE TRIBUNAL

Held by majority that the result of the election was materially affected by the improper acceptance of the nomination papers of Shri Sadhu Ram and Shri Bachitar Singh, respondents, and the election is hereby declared to be wholly void.

Parties are directed to bear their own costs.

The 24th June, 1953.

(Sd.) HARBANS SINGH, Chairman.

(Sd.) P. N. SACHDEVA, Advocate-Member.

(Sd.) HANS RAJ KHANNA, Judicial-Member.

Announced.

PRESENT: Shri Rattan Singh, Petitioner.

Shri Mukhtar Singh, Respondent No. 2.

(Sd.) HARBANS SINGH, 24-6-53.

(Sd.) P. N. SACHDEVA, 24-6-53.

(Sd.) HANS RAJ KHANNA, 24-6-53.

ANNEXURE A

ELECTION PETITION NO. 301 OF 1952

Shri Rattan Singh—
Petitioner.

Versus

Shri Davinder Singh & 27
others—Respondents.

ORDER.

Shri Rattan Singh, a duly nominated candidate for the Moga Dharamkot Constituency, has brought the present petition, challenging the election of Shri Devinder Singh, respondent No. 1, and Shri Mukhtar Singh, respondent No. 2, duly elected to the General and Reserved Seat respectively of the Punjab Legislative Assembly from the said two member Constituency, on various grounds set out at length in the election petition which need not be repeated in this order. Suffice it to say

that in para VIII of the petition, the petitioner has claimed the following or any of the following declarations:

- (a) That the election of the returned Candidate is void,
- (b) That the election is wholly void, with the prayer that the Hon'ble Tribunal may be pleased to order accordingly.

On behalf of the contesting respondents Nos. 1 and 2, objections have been raised to the maintainability of the petition in its present form inasmuch as:

- (a) The petitioner has claimed two declarations or any one of these in the alternative while he can claim only *one* relief;
- (b) It is not open to the petitioner to combine two petitions against the two Returned Candidates by lodging one petition only.
- (c) The petitioner should be called upon to deposit further security to meet the costs of the two Contesting respondents.
- (d) The petition, so far as it relates to the declaration of the election of the two returned Candidates being void, is barred by time.
- (e) The petition and the attached list are defective in various respects set out in the preliminary objections, and so the items under the various heads set out in the preliminary objections may be ordered to be struck off so as to avoid prejudice to the respondents.

(These will be taken up hereafter para-wise).

Detailed written statements on facts were also filed on behalf of the respondents which need not be mentioned in this order.

As the Preliminary Objections raised by the respondents go to the root of the case, we thought it expedient to frame the following preliminary issues:

1. Whether the petitioner cannot claim two declarations in the alternative? If not, what is its effect?
2. Whether the petitioner cannot file one petition challenging the election of both respondents Nos. 1 and 2, who were elected from a two-member Constituency? If not, what is its effect?
3. If issues Nos. 1 and 2 are found against the respondents, was it necessary for the petitioner to deposit two securities of Rs. 1000 each and if so what is its effect?
4. Is the petition, *qua* the prayer of declaration of the election of respondents Nos. 1 and 2, being void, time barred? If so, what is its effect?
5. Whether the petition and the list, annexed thereto, do not comply with the provisions of Section 83(1)(2) of the Representation of the People Act, 1951, and is the whole petition or any part of the petition or the list, liable to be struck off?

The parties agreed that no other preliminary issue arose in the case and no evidence was to be led on the above said issues.

After hearing the lengthy arguments, addressed to us on behalf of both the parties, we feel that issues Nos. 1, 2 and 4 can be taken up together because the points involved in these relate to the maintainability of the petition in its present form.

The main ground of attack to the petition in its present form is based on the plea that the petitioner can claim U/S 84 of the Representation of the People Act, 1951, any *one* of the following declarations:

- (a) That the election of the returned Candidate is void.
- (b) That the election of the returned Candidate is void and that he himself or any other candidate has been duly elected.
- (c) That the election is wholly void.

It is contended on behalf of the contesting respondents that although the petitioner has claimed both or any *one* of the two declarations, enumerated in Para VIII of his petition, he is not legally entitled to do so as he is competent to claim only one out of the three declarations enumerated Under Section 84 above. The declaration, under head (b) of Section 84, does not apply to the present case and it is to be seen whether the relief, claimed in the present petition, falls under head (a) or (c) or both of the above said Section.

In view of the fact that both the Returned Candidates have been elected from a double member Constituency as a result of one joint election, we are inclined to hold that the election of both the Returned Candidates can be challenged by a single petition as has been done in the present case. No law has been cited before us on behalf of the respondents in support of the fact that in a case of this kind two separate petitions ought to be filed for setting aside the election of the two respondents. The relief, claimed under Para VIII (a) of the petition that the election of the Returned Candidates be declared void is clearly covered by the Relief which we are entitled to grant Under Section 84(a) of the Act because the words "returned candidate" clearly include the words "returned candidates". According to the general provisions of law the singular includes the plural. The petitioner has to all intents and purposes challenged the election of both the Returned Candidates and, therefore, he in a manner wants the relief that the election is wholly void as contained in clause (c) of Section 84 of the said Act. In our opinion the result of this petition will be same if we grant the relief under clause (a) or (c) of Section 84 of the said Act, subject of course to our findings on facts to be decided hereafter.

Our attention was drawn to Section 100 of the said Act for bringing to our notice that different sets of allegations have to be made under clause (1) for declaring the election to be wholly void and under clause (2) for declaring the election of the Returned Candidates to be void respectively. Reliance was also placed on Rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules 1951, providing different periods of limitation within which a petition, challenging the election of Returned Candidates or challenging the election as a whole, has to be made. The respondents' object, in raising these objections is that if the petitioner is restricted to claim relief specified under clause (a) of Section 84 of the said Act he shall have to restrict his allegations to those contained in sub section (2) of Section 100 and his petition will be time barred. On the other hand it was conceded that if the petitioner claims a relief as laid down in clause (c) of Section 84, his petition is within limitation under Rule 119(b) but he shall have to restrict his allegations only to those contained in sub section (1) of Section 100 of the said Act.

There is no doubt that there are different lines of attack on which the election of Returned Candidates can be challenged or the election can be challenged as a whole. The petitioner has given more or less both lines of attack in the petition and on their strength has challenged the election of both the Candidates or the election as a whole. After giving our careful consideration to the facts of the present case and going through the various authorities cited before us, we are of the view that the petition is maintainable in the present form and the petitioner is entitled to claim the two declarations or any one of them in the alternative inasmuch as the relief claimed under sub heads (a) and (b) of Para VIII of the petition is practically one and the same. We also hold that the present petition is within limitation as the same was filed within the prescribed time. We, therefore hold the preliminary issues Nos 1, 2 and 4 against the respondents.

Issue No 3—This was not pressed before us by the learned counsel for the respondents and in view of our findings on issues Nos 1, 2 and 4 this issue is also decided against the respondents. We have discretion to raise the amounts of security for costs and if later on we find the respondents can establish some material to justify our using the discretion in their favour, proper order will be passed at that time.

Issue No 5—After going through the objections, raised by the respondents under this head and after carefully pursuing the petition and the attached list of particulars, we are clearly of the opinion

(a) That the petition and the attached list is defective in respect of the following particulars which are too vague and insufficient and the same are hereby ordered to be deleted

- (i) The words "their friends and supporters and particularly" occurring in para VII 5(a) of the petition after word "through" and before "Asa Singh" as these are too vague and indefinite
- (ii) Again the words "their agents, supporters and sympathisers and further that the expenses incurred on these items have not been correctly and completely shown in the returns of expenses filed by both the respondents" occurring in para '2' of Contents of Election Petition under Section 83(2) as being beyond the scope of para VII (I) of the petition
- (iii) The words "in whose presence it was threatened that other voters of the scheduled castes will also be punished and dealt with accordingly if they did not vote for Respondents Nos 1 and 2 and voted for any other

"candidate" occurring in para. '5' of Contents of Election Petition under Section 83(2) as these exceed the allegations made in paragraph VII-5, of the petition.

(b) That the particulars, supplied in the petition and the attached list with regard to the following items are not sufficiently clear and we call upon the petitioner to supply further particulars with regard to these by 10th of December, 1952.

(i) *Para. VII-5(a) of the Petition.*—Further particulars have to be supplied with regard to the place of occurrence where respondents Nos. 1 and 2 through Shri Asa Singh and Shri Darbara Singh coerced and threatened the voters who did not vote for respondents Nos. 1 and 2. The mode, in which the coercion and threat was used by these persons, has to be specified, i.e., whether it was the use of threat or of physical force or economic or social boycott or any other way.

(ii) *Para. VII-5(b) of the Petition.*—The place of occurrence where Shri Bhanga Singh and Ghoga Singh were abused by Shri Gurdev Singh has to be specified.

(iii) *Para. VII-6(a) (i) (ii) (iii) and (iv) of the Petition.*—Further particulars are to be given to specify the vouchers referred to in this portion of the petition so as to locate the particular vouchers referred to therein. In case the vouchers are numbered, the numbers of these vouchers may be stated, otherwise the date, the amount of the voucher and other particulars have to be given with a view to locate the relevant vouchers. The petitioner will, however, be restricted to confine his evidence only to the instances mentioned in this para. of the petition.

(iv) *Para. VII-6(b) (ii) of the Petition.*—The vouchers mentioned in this sub-para. relating to the engagement of Shri Ranjit Singh and Shri Kapur Singh by Shri Mukhtar Singh respondent No. 2 have also to be specified i.e., either their numbers or their dates, amounts and other particulars have to be given with a view to locate the particular vouchers referred to in this sub-para.

(c) The remaining objections are overruled and we think that the particulars given in the petition and the attached list are sufficient in respect of these, and these are allowed to stand in the petition.

As we are allowing the petitioner time to supply further particulars in respect of some items, we allow Rs. 64 as costs to the respondents to be divided equally between them. A copy of the further particulars will be supplied to the respondents on 10th December, 1952, who will put in further written statement, if needed, by 12th December, 1952, when issues on merits will be framed.

The 6th December 1952.

(Sd.) P. N. SACHDEVA, Member.

I respectfully agree with the order proposed.

The main point involved in issue No. 1 (and indirectly in issue No. 2) is whether the petitioner, in this petition, is competent to ask the Tribunal to declare that the election was wholly void, and, in the alternative, that the election of both the candidates returned from this constituency was void. The contention on behalf of respondents Nos. 1 and 2 was that he could ask for only one of the three declarations enumerated in Section 84 of the Representation of the People Act, 1951 (hereinafter referred to as the Act). Arguments of the learned counsel in support of this were two-fold:—

First.—That Section 84 provided that "A petitioner may claim any one of" the three reliefs given therein, and that there is no provision for the petitioner claiming more than one relief in the alternative; and further that the grounds of attack available to the petitioner would be determined by the particular relief that the petitioner actually claims, and that for getting an election declared to be wholly void, he will have to confine himself to those grounds which are laid down in sub-Section 1 of Section 100 of the Act, which are materially different from the grounds available to him for getting the election of one or more candidates declared void and which are contained in sub-section 2 of Section 100;

Secondly.—that different periods of limitation are prescribed under rule 119 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951 (hereinafter referred to as the Rules), for the filing of the petitions, according to whether an election is sought to be declared as wholly void or only the election of the elected candidate or candidates is sought to be declared void.

In view of the above-mentioned second line of arguments, issue No. 4 also becomes inter-connected with issues Nos. 1 and 2.

No doubt, Section 84 provides that "A petitioner may claim any one" of the reliefs detailed thereunder. It was argued that the words "any one" are equivalent to "only one", and therefore, excluded the possibility of the petitioner claiming two reliefs in the alternative. According to the dictionary meaning of the words "any one" as given in the Shorter Oxford English Dictionary, it is equivalent to "any single", and therefore strict and plain meaning of the words used does favour the contention of the counsel.

It is, however, necessary to examine other relevant provisions of the Act in order to see whether the restricted meaning suggested by the counsel for the respondents is consistent with the object of the Act. Sub-section 1 of the Section 100 enumerates the grounds on which an Election Tribunal shall declare an election to be wholly void, while Sub-section 2 mentions three other different grounds, on proof of which the election of the returned candidate can be declared to be void. It was argued that as under Section 84 the petitioner can claim either the relief of getting the election declared wholly void, or the election of a particular candidate as void, the grounds given in the two Sub-sections of Section 100 were mutually exclusive.

There is nothing in Section 100 itself to lead one to the conclusion that the two groups of the grounds of attack given in Sub-sections 1 and 2 were to be treated in two separate water-tight compartments. Let us examine this matter by taking some hypothetical cases. Supposing, during an election, practice of bribery or of undue influence had extensively prevailed at the election. This would be a ground falling under clause (a) of Sub-section 1, on proof of which the election shall have to be declared wholly void. In the same election a returned candidate A personally gave bribe to some of the voters. This would be a ground covered by clause (b) of Sub-section 2, on proof of which the returned candidate A's election shall have to be declared void. Should a petitioner be not allowed to allege both these illegalities in the petition filed by him challenging the election? And should he not be allowed to claim both the reliefs in the alternative? Of course, the bigger relief of the election being declared wholly void would cover the smaller relief of declaring the election of the returned candidate A to be void; but supposing, the Tribunal trying the case, though not finding it proved that bribery prevailed extensively at the election, yet finds that A did give bribe, then should not the petitioner be allowed to fall back upon the alternative relief? And, in any case, would the Tribunal be debarred from granting him this relief whether claimed by him or not?

Let us take another illustration, where the allegations are not of similar nature, as was the case in the above example. Nomination papers of A had been rejected on grounds which appear to be improper and this materially affected the result of the election—a ground given in clause (c) of Sub-section 1; in the same election B, one of the returned candidates also gave bribe. On the basis of the first allegation, the petitioner can ask for the whole election being set aside, while on the latter, he can only ask for B being unseated. If the grounds under Sub-sections 1 and 2 are to be treated as mutually exclusive, the petitioner would not be able to take both these grounds, and this would leave the petitioner one of the two alternatives as follows:

Either (1) the petitioner should, neither allege nor prove some of the irregularities or illegalities that have materially affected the election, or (2) the petitioner should bring two separate petitions, one containing allegations falling under Sub-section 1 and claiming the relief of election being declared to be wholly void, and the other containing allegations under Sub-section 2 with the relief against the returned candidate B only.

The first alternative would run completely counter to the very object of the Election Law. It is well recognized that election petitions are provided to ensure the purity of elections which are the corner stone of Democracy. It is obvious, therefore, that any interpretation of the law relating to the election petitions, which tends to clog or hamper the attainment of this main underlying object must be discarded. The other alternative, on the face of it, is absurd and offends against the well established and salutary rule of avoidance of multiplicity of trials and litigation.

To my mind it is clear, therefore, that from all points of view it is unthinkable to treat the grounds in Sub-sections 1 and 2 of Section 100 in two separate compartments and mutually exclusive, and a petitioner is, therefore, entitled to take up any one or more grounds of attack detailed in the two Sub-sections. The wordings of Sub-section 1 of Section 81 of the Act also lends support to this interpretation and which are as follows. "An election petition may be presented on one or more of the grounds specified in Sub-sections 1 and 2 of Section 100.....".

Once it is held that it is permissible to a petitioner to combine grounds of attack which, if proved, would entitle him to the relief of the election being declared to be wholly void, with other grounds entitling him only to get the declaration of a returned candidate's election to be void, it follows that a petitioner can claim both these reliefs in the alternative. In fact, the important part of the petition—just as in the case of a civil suit or a criminal complaint—is the statement of facts, i.e. the allegations of illegal or corrupt practices or other irregularities in the election. Though it is customary and necessary for the petitioner to detail in the petition the relief claimed by him, yet this is not an important part of the petition, and the appropriate relief follows the facts that are ultimately found to have been proved, by the Tribunal.

In view of the above discussion, therefore, it is clear that if words "any one" in Section 84 are interpreted as meaning "only one", it would wholly run counter to the very object for which the election petitions are provided and would lead to absurd results. A liberal interpretation has, therefore, to be given to these words and the same must be read as equivalent to "any one or more". There is ample authority for thus supplementing the words, in order to bring the meaning in accord with the real intention of the legislature. Maxwell on Interpretation of Statutes at P. 236 stated as follows:—

"Where the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their colocation, by rejecting them altogether, or by *interpolating other words*, under the influence, no doubt, of an irresistible conviction that the Legislature could not possibly have intended what its words signify..... ."

In a recent case, *Seaford Court Estates Ltd. V. Asher*. (1949 2 All. E.R. at P. 164) Denning, L.J. observed that—

"in the absence of it (clarity), when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and he must supplement the written word so as to give force and life to the intention of the legislature".

With regard to the question of limitation, it was argued that clause (b) of rule 119 would govern the period within which an election petition can be filed only if the following two conditions are fulfilled.

(1) There are more returned candidates than one at an election from that Constituency, and (2) the election petition seeks to get the election declared to be wholly void.

It was argued that in all Cases where these two conditions are not satisfied, clause (a) of Rule 119 would apply. The contention of the learned counsel was that, so far as this petition was concerned, two candidates having been returned from the Constituency in question, and the relief claimed by the petitioner in Clause (b) of Para. VIII of the petition being for the declaration of the election to be wholly void, the petition qua this relief, was no doubt governed by clause (b) of Rule 119 and was within time, having been filed within 60 days from the last date on which returns of election expenses could be lodged with the Returning Officer, but that so far as the relief claimed in clause (a) of Part VIII was concerned, viz., that the election of the returned Candidates is void, the same was governed by Clause (a) of Rule 119 and that the petition, qua this relief, was filed beyond time, as not having been filed within 14 days from the date on which the lodging of the Return of Election was notified in the Official Gazette. Qua issue No. 2 it was particularly stressed that inasmuch as it was not necessary, that such a notification relating to the two returned Candidates need be published on one and the same date, limitation for the filing of a petition against one candidate may begin to run from one date, and that against the other, from an altogether different date. The learned counsel, sought to infer from this that the intention of the legislature was that the election of two

candidates elected at the same election should not be challenged by one single petition. I fully recognize that some difficulty may arise in cases where, for example, three candidates have been returned from a Constituency, and a petitioner seeks to challenge the election of only two of such Candidates. In such a case certainly Clause (b) is not applicable and only clause (a) of Rule 119 would apply, and if the notification of the lodging of returns of election expenses regarding one of the returned candidates is published, more than fourteen days, after the publication of the notification of the lodging of the return by the other candidate, a petitioner would, certainly, not be able to file one petition challenging the election of both such candidates. However, it is not necessary for us, in the present case, to go into this point. The words used in clause (b) of Rule 119 are:

"...and the election petition calls into question the election as a whole....."

These words are substantially different from and do not necessarily mean: "and the election petition seeks to get the election declared to be wholly void", as the learned counsel for the respondent would like them to mean. A petitioner would be said to be challenging the Election as a whole, either, when he seeks a declaration for the election to be wholly void or when he prays for declaring the election of all the candidates returned at that election from the Constituency in question, to be void. In a two member Constituency, like the one to which the present petition relates, therefore, the petitioner would be challenging "the election as a whole" while claiming the reliefs set down by him, both in clause (a) and (b) of Para VIII, because in clause (a) he has asked for the election of both the returned candidates b ; declared as void. Qua both the reliefs, therefore, Clause (b) of Rule 119 is applicable, and an identical period of limitation is available for a petition, claiming either of these two reliefs. This being so, the arguments of the respondents in favour of his contention re: issues 1 and 2 based on their being different periods of limitation available, for the two reliefs, and incidentally on issue No. 4 fail.

With reference to issue No. 5 I have nothing to add.

The 6th December, 1952.

(Sd.) HARBANS SINGH, Chairman.

I agree.

The 6th December, 1952.

(Sd.) HANS RAJ KHANNA, Member.

Announced.

PRESENT: Shri Rattan Singh, petitioner, in person, with Pt. Atma Ram, Advocate. S. Amir Singh, for respondent No. 1, and Pt. Dina Nath, Advocate, for respondent No. 2.

(Sd.) HARBANS SINGH, Chairman.

(Sd.) H. R. KHANNA, Member.

(Sd.) P. N. SACHDEVA, Member.

The 6th December, 1952.

[No. 19/301/52-Elec.III/10790.]

By Order,

P. R. KRISHNAMURTHY, Asstt. Secy.

